



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 398 OF 2019**

**IN THE MATTER OF ARTICLES 1, 2, 3, 6, 10, 19, 20, 22, 23, 4, 48, 50, 96, 125, 159, 165(3) (6) & (7) 258 & 259 OF THE  
CONSTITUTION**

**AND**

**IN THE MATTER OF SUMMONS TO APPEAR BEFORE COMMITTEE OF PARLIAMENTARY AND TO COMPEL  
ATTENDANCE OF WITNESS TO PARLIAMENTARY COMMITTEE UNDER ARTICLES 125 OF THE CONSTITUTION OF  
KENYA, 2010**

**AND**

**IN THE MATTER OF OVERSIGHT ROLE OF THE SENATE UNDER ARTICLES 96(3) & 229 (7) OF THE CONSTITUTION  
OF KENYA 2010**

**AND**

**IN THE MATTER OF WARRANTS OF ARREST ISSUED BY THE SENATE SESSIONAL COMMITTEE ON PUBLIC  
ACCOUNTS & INVESTMENT ABSENT THE GOVERNOR OF MACHAKOS, ALFRED N. MUTUA**

**AND**

**IN THE MATTER OF ENFORCEMENT OF BILL OF RIGHTS UNDER CHAPTER FOUR OF THE CONSTITUTION OF  
KENYA, 2010**

**AND**

**IN THE MATTER OF PUBLIC ACCESS & PARTICIPATION UNDER ARTICLES 118 OF THE CONSTITUTION, 2010**

**AND**

**IN THE MATTER OF THREATENED AND/OR ACTUAL CONTRAVENTION OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF SECTION 19 OF THE PARLIAMENTARY POWERS & PRIVILEGES ACT 2017**

**AND**

**ION THE MATTER OF GOVERNOR ACT, 2012**

**AND**

**IN THE MATTER OF PUBLIC FINANCE MANAGEMENT ACT, 2012**

**BETWEEN**

DR. ALFRED N. MUTUA.....1<sup>ST</sup> PETITIONER

THE COUNTRY GOVERNMENT OF MACHAKOS.....2<sup>ND</sup> PETITIONER

VERSUS

SPEAKER OF THE SENATE.....1<sup>ST</sup> RESPONDENT

THE SENATE PARLIAMENT OF KENYA .....2<sup>ND</sup> RESPONDENT

AND

THE INSPECTOR GENERAL OF POLICE .....INTERESTED PARTY

### JUDGMENT

1. The Petitioners through a Petition dated 4/10/2019 brought pursuant to Articles 22, 23, and 165 of the Constitution and Rule 4, 8, 10 and 13 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 seek the following reliefs:-

*a) A declaration that the Senate Sessional Committee on County Public Accounts & Investment contravened Article 1, 2, 3, 10, 47, 50 & 125 of the Constitution of Kenya, 2010.*

*b) A declaration that the limited number of days given to the 1<sup>st</sup> Petitioner to prepare and appear before the 2<sup>nd</sup> Respondent's committee was insufficient and therefore a violation of the Petitioner's right to fair hearing thus unconstitutional.*

*c) A declaration that the order/warrant of arrest issued by the Respondent's Committee against the 1<sup>st</sup> Petitioner are in violation of Section 19 of the Parliamentary Powers and Procedures Act, 2017 and abuse of powers to call for evidence under Article 125 of the Constitution of Kenya, 2010, therefore null and void.*

*d) An order of certiorari to bring into Court and be quashed the order/warrant of arrest issued by Senate Sessional Committee on County Public Accounts and Investment against the 1<sup>st</sup> Petitioner on 30<sup>th</sup> September 2019.*

*e) An order lifting the order/warrant of arrest issued on the 30<sup>th</sup> September 2019 by the Senate.*

*f) The costs of the petition be granted to the 1<sup>st</sup> petitioner as against the Respondents.*

### THE PETITIONERS CASE

2. The clerk of the Senate authored a letter date 26<sup>th</sup> August, 2019 inviting the 1<sup>st</sup> Petitioner (hereinafter referred as "the Petitioner") for a meeting before the Senate Sessional Committee on County Public Accounts and Investments which was having its sitting on 18<sup>th</sup> September, 2019 within the precincts of the County Assembly of Kitui, within Kitui County. Upon receipt of the said letter the Petitioner responded via a letter dated 23<sup>rd</sup> September, 2019 indicating that the said date was inconvenient and that the venue was not appropriate among other reasons, thus:-

a) On the 18<sup>th</sup> September, 2019 he had scheduled a meeting with Senior Global experts and development partners on the implementation of Universal Health Care Programme, many of whom were travelling from abroad.

b) There was information that the Petitioner's appearance at Kitui had been highly politicised and that youths were mobilized by his political opponents in the Ukambani region, and who were to be ferried to Kitui to ridicule and portray him as a corrupt leader and therefore the same would not provide a good environment for an objective engagement with the committee.

c) The Petitioner therefore pointed out that it was deserving to reschedule the meeting to any other date as from the 3<sup>rd</sup> week of October, 2019 at another venue, possibly, Nairobi.

3. Having responded to the said letter, the Petitioner then travelled on 23<sup>rd</sup> August, 2019 as scheduled on 30<sup>th</sup> August when the travel ticket was purchased.

4. Noteworthy, is that the Senate did not respond to the Petitioner's letter dated 12<sup>th</sup> September, 2019 but rather rescheduled the said sitting to a different day whereupon the Petitioner got to learn of the same through the media.

5. The clerk of the Senate then served the office of the Petitioner with summons requiring the Petitioner to appear before the said Senate sessional committee on Public Accounts and Investments on the 30<sup>th</sup> September, 2019 at Machakos County Assembly Chambers at Machakos.

6. The County law office responded to the said summons indicating inter alia; that the Petitioner had advanced reasons for not attending the meeting and further that his letter dated 18<sup>th</sup> September 2019 had not been responded to and inter alia that the issuance of the summons was drastic, absurd, unwarranted, in bad faith and further reiterated the Petitioner's commitment and willingness to appear before the committee.

The respondent then proceeded to issue warrants of arrest which is the subject of the current proceeding before this court.

#### **THE RESPONDENTS RESPONSE AND THE BACKGROUND OF THE HEARING OF THE PETITION**

7. The Respondents were duly served with the Notice of Motion dated 4<sup>th</sup> October 2010 and the Petition dated 4<sup>th</sup> October 2019 on 9<sup>th</sup> October 2019 as per affidavit of service sworn on 11<sup>th</sup> October 2019 but did not file any response to the application and the Petition. The counsel who appeared for the Respondents did not file any response or replying affidavit within fourteen (14) days of service of the Petition as provided under **Rule 15 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013**.

8. The Counsel for 1<sup>st</sup> and 2<sup>nd</sup> Respondents Mr. Njoroge and M/s Thanji on 11<sup>th</sup> October 2019 appeared before Court and sought more time to file response. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents were granted 10 days from 11<sup>th</sup> October 2019 to file and serve response to the application and Petition. The matter was set down for mention on 18/11/2019. On 18/11/2019 there was no appearance for Respondents and nor response nor Notice of Appointment had been filed by then as directed. On 11/11/2019 Mr. Aguyo for respondents was notified of the mention date of 17/2/2020 and granted leave to file any formal application in respect of orders issued in his absence.

9. On 17/2/2020 the Petitioners were granted 14 days to file and serve submissions. The Respondents were granted 14 days to file submission in response and the matter set down for highlighting 21/4/2020. However due to COVID -19 pandemic the matter was not heard as scheduled but was set for hearing on 16/6/2020. On 16/6/2020 only Petitioners had filed submission and suit was set down for Judgment on 23/7/2020.

10. On 25<sup>th</sup> June 2020 the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, through an application under Certificate of urgency dated 24<sup>th</sup> June 2020 sought to set aside the hearing of 16/6/2020 and set the matter for another hearing date. The Court directed the Respondents to file submission without any other document within 8 days from 1/7/2020 and not later than 9/7/2020. On 9/7/2020 Mr. Njoroge Advocate for Respondents had not complied with Court's order and sought to be allowed to file submissions by close of business of 9/7/2020 and undertook not to file the intended Replying Affidavit as no leave had been sought and granted.

11. The Counsel for Interested Party did not appear during the hearing save on 9/7/2020 when Counsel sought to be granted leave to file submission by close of business of the day. None of the submissions were filed by the Interested Party.

12. The Respondents submission are now on record and shall be considered together with the Petitioners submissions.

#### **INTERESTED PARTY'S RESPONSE**

13. The Interested Party did not appear nor filed any response in spite of being served as per affidavit of service dated 11<sup>th</sup> October 2020.

#### **ANALYSIS AND DETERMINATION**

14. The only pleadings and submission on record are that of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners. The Respondents and Interested Party did not file response. The Petition as it stands is unopposed and shall be determined as envisaged under **Rule 16(1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013**; However as Respondents have put in submissions the same shall be considered. Under **Rule 16(1) of the Mutunga Rules**) it is provided:-

***“16(1) If the Respondent does not respond within the time stipulated in rule 15, the court may hear and determine the Petition in the Respondents absence.”***

15. The issues for consideration in this Petition shall therefore be from the Petitioners pleadings and the submissions by the 1<sup>st</sup> Petitioner dated 12<sup>th</sup> June 2020 to that of the 2<sup>nd</sup> Petitioner dated 13<sup>th</sup> January 2019, and submissions by Respondents filed on 9/7/2020. The issues are therefore as follows:-

**a) Whether the Petitioner's Rights to fair hearing and Fair Administrative action were violated as provided under Article 50 and 47 of the Constitution of Kenya 2010?**

16. The Petitioner aver that the Respondents did not meet the standards of fairness as set out under **Article 47 of the Constitution of Kenya, 2010**. It is urged the Respondents acted in violation of **Articles 47 of the Constitution** and the principles of Natural Justice under International Law, in changing the venue of hearing and convening a meeting in Nairobi without notifying the 1<sup>st</sup> Petitioner of the change of the venue. The matter proceeded to hearing without formally informing the Petitioners. It should be noted the Petitioners are not challenging the Respondents powers to summon Governor or County Executive Members and County Accounting Officers nor are they stating they ought not appear before the Respondents as the Respondents required of them but are concerned with the issue of non-communication of the change of venue without notification and following due process.

17. The importance of not according the Petitioners an opportunity to be heard offends the basic tenets of principles of Natural justice and its importance cannot be underscored. **Article 47(1) of the Constitution** provides; that every person has the right to administrative action that is expeditious, efficient, lawful reasonable and procedurally fair. **Sub-Section 2 of Article 47** makes it even more forceful and states that **“if**

***a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”***

18. The importance of the right to Fair Administrative Action under **Article 47 of the Constitution** cannot be over emphasized. The Court of Appeal in the case of **Judicial Service Commission vs. Mbalu Mutava & another [2014] eKLR**, states thus:-

***“Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by Article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires form which administrative law under the common law was developed.”***

***And in the case of Dry Associates Ltd v. Capital Markets Authority and another, [2012] eKLR the Court observed;***

***“Article 47 is intended to subject administrative processes to constitutional discipline hence relief for administrative grievances is no longer left to the realm of common law or judicial review under the Law Reform Act (Cap 26 of the Laws of Kenya) but is to be measured against the standards established by the Constitution.”***

19. In the instant Petition, the Respondents through a letter dated 26<sup>th</sup> August 2019 authored by its Clerk, who is also the Secretary of the Parliamentary Service Commission, the 1<sup>st</sup> Petitioner was invited for a meeting with the Senate Sessional Committee on County Public Accounts and investments to be held on 18<sup>th</sup> September 2019, at the precincts of County Assembly of Kitui in Kitui County.

20. The Petitioner upon receipt of the letter responded to the same vide letter dated 12<sup>th</sup> September 2019, stating that the appointed date was not convenient and the venue was not appropriate and sought another date. The 1<sup>st</sup> Respondent did not respond to the said letter or in any way communicate its position on the request made vide letter dated 12<sup>th</sup> September 2019. The Petitioner only learned through the media that the meeting was postponed to another day.

21. On the 25<sup>th</sup> September 2019 while the 1<sup>st</sup> Petitioner was still out of the County, the Respondents’ clerk caused service of summons to appear before the Senate Sessional Committee on Public Accounts and Investments on the 30<sup>th</sup> September 2019 at Machakos County Assembly Chambers, Machakos.

22. The Petitioners responded by letter dated 26<sup>th</sup> September 2019 to the summons indicating reasons inter alia; that issuance of summons was drastic, absurd and unwarranted measure, in bad taste as the 1<sup>st</sup> Petitioner had not refused to appear but rather requested for adjournment and the same would portray the process as tainted with malice aforethought and/or bias, further that the notice was too short for the petitioners to compile a written response on Audit reports, concerning three (3) financial years under circumstances, where they were only given two (2) working days; being 26<sup>th</sup> September 2019 and 27<sup>th</sup> September 2019.

23. The 1<sup>st</sup> Petitioner upon service with summons dated 25<sup>th</sup> September 2019; was required to furnish the Respondents with financial operations of Machakos County for three (3) separate years on the 30<sup>th</sup> September 2019. The 1<sup>st</sup> Petitioner aver that the Notice was not only short but inadequate for preparation of all the said reports. It is urged that this was in breach of the Petitioners Constitutional Rights as provided under **Article 50(2)(c) of the Constitution**.

***“Every accused person has the right to a fair trial which includes the right –***

***c) to have adequate time and facility to prepare a defence.”***

24. I find the summons issued by the respondents and served within only two working days for the 1<sup>st</sup> Petitioner to comply with the Respondents demands before the hearing scheduled for 30<sup>th</sup> September 2019 was against the principle of Rules of Natural Justice; was irrational; unfair and unconstitutional, notwithstanding the Senate and any of its Committees is clothed with the Constitutional power and authority to “summon any person” to appear before it for the purpose of giving evidence or providing information, that power should be exercised within the provisions of the law.

25. The Senate and its committees in addition to the Constitutional and Statutory power of Parliament to enforce attendance and compel production of documents, Parliament traditionally and as a matter of parliamentary practice has always enjoyed the power to treat disregard of its summons as contempt of Parliament and to punish for such contempt.

26. The Respondents submit the power to summon any person is not restricted, qualified or otherwise conditioned. It cannot be assumed that Parliament will exercise that power in an arbitrary or capricious manner. On the contrary, the presumption is that Parliament as State Organ will use its powers in good faith and in compliance with the Constitution.

27. The 1<sup>st</sup> Petitioner was summoned by the Respondents while out of the Country, and without adequate notice and further issuing a warrant of arrest in a situation where the Petitioner was reasonably and understandably unavailable and/or absent, the 1<sup>st</sup> Respondent abused its powers to summons and in seeking to enforce attendance as outlined under **Article 125 of the Constitution of Kenya 2010**.

28. The Respondents did not respond to letters dated 12<sup>th</sup> September 2019 and 26<sup>th</sup> September 2019 seeking adjournment of meeting envisaged by both invitations dated 26<sup>th</sup> September 2019 and summons served on 25<sup>th</sup> September 2019. This was a clear violation of **Article 47 of the Constitution** requiring that if a right of fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the actions. The Respondents having failed to respond to the 1<sup>st</sup> Petitioner's request for adjournment; they therefore violated the 1<sup>st</sup> Petitioner's constitutional right to be given reasons in writing for the rejection of the plea for adjournment, by failure to give the 1<sup>st</sup> Petitioner written notice.

29. Under **Article 50(2) (j) of the constitution** which guarantees the right **"to be informed in advance"** cannot be read restrictively to mean in advance at the trial. The duty imposed on the Court is to ensure a fair trial for an accused person and the right of disclosure is protected, of the accused being informed of the evidence, the prosecution intend to rely on and to have reasonable access to that evidence in advance. The right is to be read together with other rights, that constitute the right to a fair trial. Further it is of paramount importance to note, the right to fair trial is one of the constitutional rights that is not limited by virtue of **Article 25 of the Constitution** which provides:-

**"25. Fundamental Rights and freedoms that may not be limited Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited—**

a)...

b)...

**(c) the right to a fair trial;"**

30. In the case of **Thuita Mwangi and 2 Others v Ethics and Anti-corruption Commission and 3 others (2013) Petition 153 of 2013 consolidated with Petition 369 of 2013** where it was held that;

***"The right to be provided with material the prosecution wishes to rely on is not a one-off event but is a process that continues through the trial period from the time the trial starts when the plea is taken. The reality is that there will be instances where all the information relating to investigation may not all be available at the time of charging the suspect to taking the plea. The disclosure of evidence, both inculpatory and exculpatory, is easily dealt with during the trial as the duty to provide the material is a continuing one and the magistrate is entitled to give such orders and directions as are necessary to effect this right. When the fresh material is provided, the accused is entitled to have the time and opportunity to prepare their defence. "***

31. In the instant Petition, it is clear the Respondents proceeded with the case against the 1<sup>st</sup> Petitioner in an altered venue, without having given the 1<sup>st</sup> Petitioner notice of change of the venue. The Respondents and its committee did not give reasons why it administratively proceeded with the issue without giving notice and hearing the petitioners herein I find the Respondents and committee's action was totally against the Rules of natural justice and fair hearing as envisaged under **Article 50(1) of the Constitution** and **Article 47 of the Constitution** where it is provided administrative action has to be expeditious, efficient, lawful, reasonable and procedurally fair. The administrative action herein was against all the requirements under **Article 47(1) and Article 50(2) (b) (c), (f), (j), (k) of the Constitution** as regards fair hearing.

32. Under **Article 1(3)** read together with **Article 93 of the Constitution**, the 2<sup>nd</sup> Respondent is established as a state organ and required to perform their functions in accordance with the Constitution. The Court of Appeal while interpreting the applicability of the Rules of Natural Justice by state organs, in the case **Judicial Service Commission v Mbalu Mutava & Another (2015) eKLR**

***[19] In exercise of its powers under the Constitution or under legislation, public officers, state officers, state organs and independent bodies or tribunal may make decisions which may be characterized as judicial, quasi-judicial or administrative depending on the empowering provision of the Constitution or the law. The landmark decision of the House of Lords in Ridge v. Baldwin [1964] AC 40 clarified the law, that the rules of natural justice, in particular right to fair hearing, (audi alteram partem rule) applied not only to bodies having a duty to act judicially but also to the bodies exercising administrative duties. In that case, Lord Hodson at page 132 identified three features of natural justice as:***

- 1. the right to be heard by an unbiased tribunal.***
- 2. the right to have notice of charges of misconduct***
- 3. the right to be heard in answer to those charges."***

33. The Committee on County Public Accounts and Investments under **Article 25 of the Constitution of Kenya, 2010**, has the same power as the High Court of Kenya and thus set as quasi-judicial proceedings and thus bound by the rules of procedural fairness. Its for this reason, by its failure to respond to the letter by the 1<sup>st</sup> Petitioner dated 12<sup>th</sup> and 26<sup>th</sup> September 2019 seeking an adjournment, despite receipt of the same timely, thereon is blamed for its breach of the rules of procedural fairness and acting in outright bias by failing to advance reasons for rejecting the written plea for adjournment.

34. The issue of requirement of adherence to procedural fairness of quasi-judicial proceedings was dealt with in the case of **Republic v. Speaker of the National Assembly and 4 others Ex-parte Edward R. O. Ouko [2017] eKLR** where the Court said:-

***"Assuming that the procedure that was before Parliament was a mere inquiry as alleged by the Respondent, is such an inquiry outside the purview of judicial review? According to Lord Denning in Selvarajan vs. Race Relations Board [1976] 1 ALL ER 12:***

***“...it has been held that the investigating body is under a duty to act fairly; but that which fairness requires depends on the nature of the investigation and the consequences which it may have on the persons affected by it. The fundamental rule is that, if a person may be subjected to pains and penalties, or be exposed to prosecution or proceedings or be deprived of remedies or redress, or in some way adversely affected by the investigation and report, then he should be told the case against him and be afforded a fair opportunity of answering it.”***

35. Upon considering the quasi-judicial proceedings before committee on County Public Accounts and Investment, their Proceedings against the 1<sup>st</sup> Respondent without having informed him the venue and in his absence, it is, clear that the committee conducted itself in a blatant disregard of procedural fairness and did not conduct itself as required by law. It ignored the basic rules of civil procedure being a quasi-judicial proceedings by proceeding without proper service of Hearing Notice upon the Petitioner, having changed the venue of trial.

36. The committee further changed venue from Machakos, County Assembly Chamber to Nairobi without any communication to the Petitioners. The office of the Clerk of the County Assembly of Machakos had indicated to the Respondents that the County Assembly Chamber was not available as the staff and members of the Country Assembly of Machakos were attending National games in Eldoret, Uasin Gishu. That despite the bias the Petitioners still instructed the Deputy Governor, Honourable Francis Maliti, who is the County Executive Committee member, to appear and to his surprise the venue had been changed without prior communication to the Petitioners.

37. The Respondents have not explained nor responded to the alleged change of venue without notice and there is no way anyone would have known in advance the change of the venue, including the Petitioners Counsel so as to attend on behalf of the Petitioners.

38. The Respondents submit that the Applicant, if he had difficulties obeying the summons, he should have first gone to the Senate Committee to explain his difficulties. This could have been done through his Advocates if the Respondents had communicated the change of venue.

39. The Respondents relied in the decision in ***Mwende Maluki Mwinzi v Cabinet Secretary, Ministry of Foreign Affairs & 2 Others [2019] eKLR*** the High Court held:

***“109. In view of the aforementioned authorities I find the petitioner is not being denied an opportunity to work for Republic of Kenya by pending posting, as the process has not been completed and the Appointing Authority is yet to appoint her as is awaiting the approval from the National Assembly and further there is no propriety in which an office holder has a vested property interest.***

***110. I have considered all issues raised in this petition and facts of this petition and I find that the public interest strongly militates against the exercise of this court’s determination of the issues raised in the petition as the current process of approval, return of the approval to the Appointing authority and appointment is not complete and thus the process should be allowed to be completed. In this petition under Article 132(2) of the constitution, the President nominated the petitioner, and is awaiting the approval of the National Assembly, is yet to appoint the petitioner as an ambassador. The National Assembly approved the petitioner’s nomination with a condition that she cedes her US citizenship. The petitioner did not await President’s appointment or dismissal but proceeded to file the present petition. I find as the President of the Republic of Kenya is yet to make the appointment formally on the advice of the National Assembly, the petition is not ripe for determination. The petition in my view is premature.”***

40. In view of the change of Venue without prior communication, the 1<sup>st</sup> Petitioner did not attend the sitting as the same was not communicated to him but only came to learn of the same through mass media and in specific Kenya Television Network (NTV) after the Respondents issued warrant of arrest. In view of the committee’s acts of failing to notify the 1<sup>st</sup> Petitioner of changing of the venue; and in absence of evidence controverting the Petitioners evidence, by failure of the Respondents to file any response to the Petitioners averments; I find the committee’s action violated the Petitioners constitutional rights and fair hearing. The warrant of arrest was issued in complete breach of **Article 47 and 50 of the Constitution**. The proceedings were not reasonable, lawful and procedurally fair. The 1<sup>st</sup> Petitioner was condemned unheard and without being informed of the change of the venue of the hearing. I find that the warrant of arrest against the 1<sup>st</sup> Petitioner illegal and unlawful as it was issued in complete disregard of **Article 47 and 50 of the Constitution of Kenya 2010**.

41. In this Petition and from the facts of the case, I find no reason why it was so difficult for the committee not to reply to the Petitioner’s request for adjournment either rejecting or granting the adjournment, secondly it was not only unreasonable to change the venue but failure to communicate to the Petitioner and proceeding to hearing knowing the Petitioner was not aware of the changed venue, and proceeding ex-parte and issuing warrant of arrest was procedurally unfair. This is a waste of government revenue and invaluable time. I find that the decision to issue warrant of arrest to be executed by the interested party herein, was reached in an arbitral manner by the Respondents, despite the Petitioner having sought leave of absence and showing commitment to the process. Adjournment of the matter to another date would have not caused any irreparable damage to anyone; nor the subject matter but would have ensured fair hearing. The Petitioner as submitted, is committed and willing to appear before the committee, which committee should comply with provisions of the Constitution and law as regards fair hearing.

42. In ***Mbalu Mutaba Case (Supra)*** the Court of Appeal stated that:-

***“The Right to fair hearing under the common law is a general right, albeit, a universal one. It refers to the three features of natural justice identified by Lord Hodson in Ridge V. Baldwin (Supra). Although it is applicable to administrative decisions, it is apparently limited in scope in contract to right to fair administrative action under Article 47(1) as the latter encompasses several duties – duty to act expeditiously, duty to act fairly, duty to act lawfully, duty to act reasonably and, in the special case mentioned in article 47(2), duty to give written reasons for the administrative action. The duty to act lawfully and duty to act reasonably refers to the substantive justice of the decision whereas the duty to act expeditiously, efficiently and by fair procedure refers, to procedural justice.”***

43. I confirm even today the right to fair hearing as enunciated by the Court of Appeal in **Mbalu Mutava's case**, is still applicable to administrative actions by state organs. The Respondents being state organ was expected to do so but while armed with the opportunity and while it had the opportunity to demonstrate, that justice is our **"shield and defender"** it squandered the chance hence this matter before me today. What the committee intended to swiftly determine is still a backlog for its failure to appreciate the importance of the Rules of Natural Justice; that no one should be condemned unheard and lastly everyone has inalienable right to fair hearing. The Respondents had a duty to act fairly, duty to act lawfully, duty to act reasonably and duty to give written reasons for the administrative action of declining to respond to letters and duty to communicate the changing of the hearing venue which culminated to illegal issuing of warrant of arrest.

44. To the extent of my findings, I find that the Petitioners Petition is meritorious. I proceed to grant the following reliefs in favour of the Petitioners:-

**a) A declaration be and is hereby issued that the Senate Sessional Committee on County Public Accounts & Investments contravened Articles 47, 50 and 125 of the Constitution.**

**b) A declaration be and is hereby issued that the limited number of days given to 1<sup>st</sup> Petitioner to prepare and appear before the 2<sup>nd</sup> Respondent's Committee was insufficient and therefore a violation of the 1<sup>st</sup> Petitioner's right to fair hearing and the same was irrational, unfair, unreasonable and unconstitutional.**

**c) A declaration be and is hereby issued that the orders / Warrant of arrest issued by the Respondent's Committee against the 1<sup>st</sup> Petitioner is in violation of section 19 of the Parliamentary powers and procedures Act, 2017 and an abuse of powers to call for evidence under Article 125 of the Constitution of Kenya,, 2019 therefore null and void.**

**d) An order of certiorari be and is hereby issued to bring into Court and be quashed the order/warrant of arrest issued by Senate Sessional Committee on County Public Accounts and Investments against the 1<sup>st</sup> Petitioner on 30<sup>th</sup> September 2019.**

**e) An order be and is hereby issued lifting the order/warrant of arrest issued on the 30<sup>th</sup> September 2019 by the Senate.**

**f) Costs of the petition awarded to the 1<sup>st</sup> Petitioner against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.**

**Dated, Signed and Delivered at Nairobi on this 3<sup>rd</sup> day of August, 2020.**

.....

**J. A. MAKAU**

**JUDGE**