



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**JUDICIAL REVIEW DIVISION**  
**JUDICIAL REVIEW APPLICATION NO. 575 OF 2017**  
**REPUBLIC.....APPLICANT**  
**VERSUS**  
**THE FIREARMS LICENCING BOARD.....1<sup>ST</sup> RESPONDENT**  
**THE INSPECTOR GENERAL.....2<sup>ND</sup> RESPONDENT**  
**THE DIRECTOR OF PUBLIC PROSECUTION...3<sup>RD</sup> RESPONDENT**  
**EX PARTE: MILLITONIC MWENDWA KIMANZI KITUTE**

**JUDGEMENT**

**Introduction**

1. In his Notice of Motion dated 22<sup>nd</sup> September, 2017, the ex parte applicant herein, **Millitonic Mwendwa Kimanzi Kitute**, seeks the following orders:

1. **THAT an order of certiorari to move into this Honourable Court and quash the decision of the 1<sup>st</sup> respondent revoking the Applicant's Firearm certificate No. 9480 and withdrawing his firearms namely Ceska Pistol Serial Number B 350172 Beretta Pistol Serial Number A0221832 and Glock 19 Gen. 4 Pistol Number YBM880.**
2. **THAT an order of Prohibition prohibiting the Respondents from revoking the Applicant's Firearm certificate No. 9480 or withdrawing his firearms namely Ceska Pistol Serial Number B 350172, Beretta Pistol Serial Number A0221832 and Glock 19 Gen. 4 Pistol Number YBM88 in the future without following the laid down procedure.**
3. **THAT the costs of this application be provided for.**

**Ex Parte Applicant's Case**

2. According to the *ex parte* applicant, he was a candidate in the last General Elections contesting for the Member of National Assembly for Kitui East Constituency under NARC Party which was under the NASA Coalition which contest he lost to his opponent who contented under the Jubilee Party. He however filed a petition being Petition No. 1 of 2017 before the Kitui High Court.

3. According to the applicant, immediately after the said elections on 9<sup>th</sup> August, 2017 he was arrested and taken to Court at 2 p.m. and charged with the offence of behaving in a disorderly manner while carrying a firearm contrary to section 33 of the **Firearms Act** and was released on police bond since the 3<sup>rd</sup> Respondent found the charges to be defective and recommended further investigation.

4. The applicant however averred that on 30<sup>th</sup> August, 2017 he was arrested and taken to Athi River Police Station where he was charged with the offence of creating disturbance on the 31<sup>st</sup> August, 2017 in criminal case No. 402 of 2017 which is still pending.

5. It was the applicant's case that from a perusal of the statements therein that while all witnesses recorded their statements within three (3) days of the date of the alleged offence, it took the 3<sup>rd</sup> Respondent eight (8) months to have him charged.

6. It was the applicant's contention that his arrests and prosecution are in bad faith and were only commenced after his complaints of rigging of the Kitui East Constituency Parliamentary Election and were meant to have him detained in custody and not to file his petition.

7. It was averred that on 19<sup>th</sup> September, 2017, the applicant was called by the Secretary, Firearms Licensing Board and was handed a letter dated 18<sup>th</sup> September, 2018 whereby his firearms certificate was revoked and he was ordered to surrender his firearms and ammunitions by 20<sup>th</sup> September, 2017 for confiscation and destruction. Upon enquiring why such drastic measures were being taken without notice, the applicant averred that he was given a copy of a letter dated 22<sup>nd</sup> August, 2017 which letter required him to show cause why his firearms certificate should not be revoked and his firearms confiscated for destruction.

8. The applicant averred that despite informing the said Secretary that he had not received the said letter, he was told that the said letter of 18<sup>th</sup> September, 2017 could not be revoked.

9. The applicant averred that upon reading the said letter he noted that the reasons for the revocation and confiscation of his firearms was based on an incident of December, 2016 and 8<sup>th</sup> August, 2017 which incidents were alleged to be cases before the Court but which he was unaware of. He accordingly formed an opinion that there was malice in the whole matter since in the alleged December, 2016 incident, he was only charged in Mavoko Law Courts on 31<sup>st</sup> August, 2017, eight months after the letter was written.

10. According to the applicant, the incident of 8<sup>th</sup> August, 2017 does not exist but disclosed that there was an incident on 9<sup>th</sup> August, 2017 when one **Nimrod Mbai** strangled him at Sunrise Hotel and took away his firearm which was taken to Sombe Police Station and a false report made. The applicant averred that the 1<sup>st</sup> Respondent wrote to the DCI Kitui Central on 16<sup>th</sup> August, 2017 informing him that the issue of revocation of the applicant's firearm would be discussed upon the determination of the case.

11. It was the applicant's case that the procedure and the process followed by the 2<sup>nd</sup> Respondent in revoking his firearm certificate and the notice of confiscation of his firearms was unlawful and illegal and the said decision ought to be quashed. In his view, it was unlawful to make such a decision without him being given an opportunity to be heard and hence the said decision was given against the rules of natural justice.

12. There was a further affidavit in which the applicant narrated the ordeal he suffered in the hands of the police.

### **Respondents' Case.**

13. The Respondents opposed to the application.

14. According to the Respondents, the 1<sup>st</sup> Respondent, the Firearms Licensing Board (hereinafter referred

to as “the Board”) received a report on 14<sup>th</sup> December, 2016 that the police were trying to disperse a scuffle that had ensued between two groups of people, to wit, Wathama Welfare Association and Syokimau Mavoko Association that were engaging in a mob fight due to a disagreement over how to raise funds for the Applicant’s campaigns as he was vying for a parliamentary seat.

15. According to the Respondents, at that point the applicant suddenly removed his gun and shot thrice in the thin air endangering the lives of the other people involved in the scuffle. It was disclosed that the incident was reported and the applicant was charged with the offence of creating disturbance in a manner likely to cause a breach of the peace.

16. It was further averred that on 21<sup>st</sup> December, 2016, the Board was notified by the Divisional Criminal Investigation Officer, Athi River that an investigation was being carried out against the applicant for mis-use of his firearm, a Beretta Pistol S/N A022183Z. Another report, it was disclosed, was received on 9<sup>th</sup> August, 2017 that the applicant was engaged in another altercation whereby he discharged his firearm towards a group of people and was thus disarmed by one **Nimrod Mbai**, a political aspirant who then handed over the firearm make Glock Ges S/N YBM880 together with 15 rounds of ammunition to the officer commanding Zombe Police Station.

17. It was averred that the applicant was later arrested and released after the office of the 3<sup>rd</sup> Respondent recommended that the police investigate further and cover some outstanding areas.

18. According to the Board, it received another report that on 28<sup>th</sup> August, 2017 the applicant, while in Kitui threatened to shoot one **Mr Wanjohi Nganga Gichemba**, an auctioneer from Nairobi over a motor vehicle the said **Gichemba** was seeking to repossess after a bank was defrauded using the said vehicle. Accordingly the applicant was charged with threatening to kill.

19. It was averred that reports reaching the Board from various security committees in the country have elicited various security concerns in respect of how the applicant is handling and managing his firearms. It was therefore averred that the revocation was deemed necessary as the same was based on public interest and the law, to wit section 7 of the **Firearms Act**, Cap 117 that allows the licensing officer to revoke a firearm certificate if the officer is satisfied that the holder is unfit to be entrusted with a firearm or if the holder fails to comply with a notice requiring him to deliver up the firearm certificate.

20. It was averred that the Board wrote to the applicant vide a letter dated 22<sup>nd</sup> August, 2017 to show cause why his firearm certificate should not be revoked but he failed and or ignored to respond to the same.

21. According to the Respondent it is clear from the foregoing events and facts that the Applicant is not a person suitable to hold any of his three firearms as has been recommended after deliberations by the Board and is as such required to surrender all his firearms including one Firearm Ceska Pistol S/N B35917 which he is still in possession of.

22. The Respondent insisted that the Applicant’s behaviour leading to the revocation of his firearms certificate was not based on any other collateral reason but was a result of his actions that was a threat to public safety and peace. The applicant was therefore accused of not having approached this Court with clean hands and that this application was based on deliberate concealment, distortion and non-disclosure of material facts made with the latent intent to mislead the Court as to the true facts leading to the revocation.

23. It was the Respondent’s case acted within their respective mandates under the relevant establishing legislation and did not act illegally or contravene any code of Regulation; and neither did they act under the control or direction of any party; but were independently discharging their duties as mandated under the law. The 1<sup>st</sup> Respondent insisted that its decision was based on the law and information received which information it believed was true and not on any other collateral reasons.

24. It was therefore the Respondents' case that the applicant failed to demonstrate that the Respondents acted in bad faith or abused the legal process in a manner to trigger this Court's intervention since they in fact gave the Applicant a chance to be heard before his firearm certificate was revoked but he instead ran to court.

25. The Respondents therefore prayed that the application be dismissed in its entirety.

### **Determinations**

26. I have considered the issues raised herein.

27. Section 5(7) of the *Firearms Act*, Cap 114 of the Laws of Kenya provides:

*(7) A firearm certificate may be revoked by a licensing officer if—*

*(a) the licensing officer is satisfied that the holder is prohibited by or under this Act from possessing a firearm to which the firearm certificate relates, or is of intemperate habits or unsound mind, or is otherwise unfitted to be entrusted with a firearm; or*

*(b) the holder fails to comply with a notice under subsection (5) requiring him to deliver up the firearm certificate.* [Underlining mine].

28. This Court has had occasion to deal with the word "satisfied" in **Republic vs. Kenya Forest Service Ex-parte Clement Kariuki & 2 Others [2013] eKLR**, where the Court held that the catchword in the above section is that the Board must be "*satisfied*". For the Board to be said to have been satisfied, it is my view that it must consider all the relevant factors.

29. The word "consider" was defined in **Onyango Oloo vs. Attorney General [1986-1989] EA 456** in which the Court of Appeal expressed itself as follows:

**"To consider" is to look at attentively or carefully, to think or deliberate on, to take into account, to attend to, to regard as, to think, hold the opinion... "Consider" implies looking at the whole matter before reaching a conclusion... It is improper and not fair that an executive authority who is by law required to consider, to think of all the events before making a decision which immediately results in substantial loss of liberty leaves the appellant and others guessing about what matters could have persuaded him to decide in the manner he decided."**

30. As was held by Warsame, J (as he then was) in **Re: Kisumu Muslim Association Kisumu HCMISC. Application No. 280 of 2003**, that where an officer is exercising statutory power he must direct himself properly in law and procedure and must consider all matters which are relevant and avoid extraneous matters. The learned Judge further held that the High Court has powers to keep the administrative excess on check and supervise public bodies through the control and restrain abuse of powers. Concerning irrelevant considerations, where a body takes account of irrelevant considerations, any decision arrived at becomes unlawful. Unlawful behaviour might be constituted by (i) an outright refusal to consider the relevant matter; (ii) a misdirection on a point of law; (iii) taking into account some wholly irrelevant or extraneous consideration; and (iv) wholly omitting to take into account a relevant consideration. See **Padfield vs. Minister of Agriculture and Fisheries [1968] HL**.

31. In **Re Hardial Singh and Others [1979] KLR 18; [1976-80] 1 KLR 1090**, the Court expressed itself as follows:

**"The Minister for agriculture has the duty to ensure that all arable land is properly utilised for the public benefit in the production of foodstuffs to feed the population and earn foreign exchange required for the development of the country. Section 187 of the Agriculture Act is designed to empower the Minister to take steps for preventing or delaying the deterioration of**

a holding due to mismanagement. Such steps are in the words of section 75 of the Constitution “in the interests of the development or utilisation of any property in such manner as to promote the public benefit. The necessity of such provision is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property...The court can therefore interfere with the decision of a Minister if the Minister does not act in good faith, or if he acts on extraneous considerations which ought not to influence him, or if he plainly misdirects himself in fact or in law...The management order is based on mismanagement and correctly follows the wording of section 187(1) of the Agriculture Act. In order of sale, however, the reason given is inability to develop the holding. It is an extraneous consideration, which ought not to have influenced the Minister, and it amounts to a misdirection in law. The facts, which induced the Minister to find that the holding was mismanaged and that the applicants were unable to develop it, were disclosed neither to the applicants nor later to the court. In the ordinary way and particularly in cases, which affect life, liberty or property, a Minister should give reasons and if he gives none the court may infer that he had no good reasons. The Minister has given no reasons while the applicants have shown that there was no inadequate management or supervision and that, in the circumstances prevailing in Nyanza, the holding is fully developed. The conclusion is therefore that the Minister misdirected himself on the facts... The provisions of section 187 of the Act, being aimed at depriving the owner of his holding (even for good reason), should be construed strictly. Orders made must comply with the Act, and if they do not so comply in important aspects, they will be null and void...The courts would be no rubber stamp of the executive and if Parliament gives great powers to the Minister, the courts must allow them to him: but, at the same time, they must be vigilant to see that he exercises them in accordance with the law. He must act within his lawful authority...An act, whether it be of a judicial, quasi-judicial or administrative nature, is subject to the review of the courts on certain grounds. The Minister must act in good faith; extraneous considerations ought not influence him; and he must not direct himself in fact or law...It is clear that both sections 187(1) and (4) require the Minister to be “satisfied”. It gives him a discretion; and it is his discretion to act upon the facts before him, and not for the court to sit on appeal so as to impose its judgement on the facts upon the Minister. There is no doubt that the Minister acted in good faith. But the Minister had to have certain facts before him. The farms had to be managed and supervised; that had to be done so inadequately that the result was necessity to prevent or delay deterioration. The Minister did not give evidence but he swore an affidavit. From it the minister was concerned with development and referred to his national concern relating to sugar production. In his order for sale he said that the owners were not able to develop the farm. The true test is whether the farm should be leased or sold to save it from deteriorating; the purpose of showing the cause is to allow the Minister to decide whether, in view of the deterioration, the farm had better be leased or sold. In either case, the owners are not going to be considered able to develop the farm or to continue as they have been. They are indeed, no longer in occupation. It is clear that the reasons given in the order for sale illustrate that the Minister had asked himself the wrong question; it being a question not enjoined upon him by the Act. He had therefore misdirected himself in law and that order is null and void.”

32. In Republic vs. Institute of Certified Public Accountants of Kenya Ex Parte Vipichandra Bhatt T/A J V Bhatt & Company Nairobi HCMA No. 285 of 2006, the Court held:

“If a tribunal whose jurisdiction was limited by statute or subsidiary legislation mistook the law applicable to the facts as it had found then it must have asked itself the wrong question, i.e. one into which it was not empowered to inquire and so had no jurisdiction to determine. Its purported determination not being a ‘determination’ within the meaning of empowering legislation was accordingly a nullity...Error of law by a public body is a good ground for judicial review. An administrative or executive authority entrusted with the exercise of a discretion must direct itself properly in law...It is axiomatic that that statutory power can only be exercised validly if they are exercised reasonably. No statute can ever allow anyone on whom it confers a power to exercise such power arbitrarily and capriciously or in bad faith.”

33. In this case the applicant's case is that no notice was issued to him informing him of the intention to revoke and confiscate his said licence and firearm which action was taken without involving and or informing him.

34. Article 47(1) and (2) of the Constitution provides as follows:

***(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.***

***(2) 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.***

35. Apart from that provision section 4(1), (2) and (3) of the *Fair Administrative Action Act* provides as follows:

***(1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.***

***(2) Every person has the right to be given written reasons for any administrative action that is taken against him.***

***(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-***

***(a) prior and adequate notice of the nature and reasons for the proposed administrative action;***

***(b) an opportunity to be heard and to make representations in that regard;***

***(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;***

***(d) a statement of reasons pursuant to section 6;***

***(e) notice of the right to legal representation, where applicable;***

***(f) notice of the right to cross-examine or where applicable; or***

***(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.***

36. What the Constitution requires in my view is the notification of the intention to have the Certificate withdrawn and the reasons for the intended action. The said reasons, in my view must depend on the peculiar circumstances of each case and it is those peculiar circumstances which ought to be considered which consideration must under Article 47 of the Constitution entail an opportunity to the applicant Certificate holder to be heard on the circumstances alleged to constitute satisfactory reasons for the withdrawal of the Certificate.

37. The law is that in the ordinary way and particularly in cases, which affect life, liberty or property, the executive should give reasons and if he gives none the court may infer that he had no good reasons. Similarly where the reason given by the executive is not one of the reasons upon which it is legally entitled to act, the Court is entitled to intervene since the action by the executive would then be based on an irrelevant matter.

38. In this case the Board contended that it wrote to the applicant vide a letter dated 22<sup>nd</sup> August, 2017 to show cause why his firearm certificate should not be revoked but he failed and or ignored to respond to

the same. The applicant however denies having received this letter. I appreciate that under section 107(1) of the **Evidence Act**, Cap 80 Laws of Kenya, “*whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*” I also appreciate the legal maxim that *omnia praesumuntur legitime facta donec probetur in contrarium* (all things are presumed to have been legitimately done, until the contrary is proved). However, as was held by **Seaton, JSC** in the Uganda case of **J K Patel vs. Spear Motors Ltd SCCA No. 4 of 1991 [1993] VI KALR 85:**

**“The proving of a negative task is always difficult and often impossible, and would be a most exceptional burden to impose upon a litigant. The burden of proof in any particular case depends on circumstances in which the claim arises. In general the rule which applies is *ei qui affirmat not ei qui negat incumbit probatio*. It is an ancient rule founded on considerations of good sense and it should not be departed from without strong reasons...As applied to judicial proceedings the phrase “burden of proof” has two distinct and frequently confused meanings, (1) the burden of proof as a matter of law and pleading – the burden, as it has been called, of establishing a case, whether by preponderance of evidence, or beyond reasonable doubt; and (2) the burden of proof in the sense of adducing evidence...The *onus probandi* rests, before evidence is gone into, upon the party asserting the affirmative of the issue; and it rests, after evidence is gone into, upon the party against whom the tribunal, at the time the question arises, would give judgement if no further evidence were adduced.” See **Constantine Steamship Line Ltd vs. Imperial Smelting Corp [1914] 2 All ER 165 (H.L); Trevor Price vs. Kelsall [1975] EA 752 at 761; Phipson on Evidence 12<sup>th</sup> Ed Para 91; Phipson At Para 95.****

39. Similarly, the Supreme Court of Uganda in **Sheikh Ali Senyonga & 7 Others vs. Shaikh Hussein Rajab Kakooza and 6 Others SCCA NO. 9 of 1990 [1992] V KALR 30** was of the view that the general rule that he who alleges must prove applies and since it was the appellants who were alleging that the fifth appellant was qualified, to hold that the negative must be proved by the respondents would be to impose an unnecessary burden on them.

40. In this case, there was a constitutional and statutory obligation placed on the 1<sup>st</sup> Respondent Board to give the applicant prior and adequate notice of the nature and reasons for the proposed administrative action and an opportunity to be heard and to make representations in that regard. Whereas the Board averred it wrote to the applicant vide a letter dated 22<sup>nd</sup> August, 2017 to show cause why his firearm certificate should not be revoked but he failed and or ignored to respond to the same, the applicant on his part contended that he only saw the letter when he went to inquire why his firearm certificate was being revoked and his firearms confiscated. The Respondent has not disclosed by what means the said letter dated 22<sup>nd</sup> August, 2017 was transmitted to the applicant.

41. In the premises there is no evidence on the basis of which I can find that the provisions of section 5(7) of the **Firearms Act** were satisfied.

42. It has been said time and again that a decision which is arbitrarily taken cannot stand the test of fairness. In the words of **Chaskalson, Woolman and Bishop** in ***Constitutional Law of South Africa, Juta, 2nd ed. 2014, page 49:***

**“Laws may not grant officials largely unfettered discretion to use their power as they wish, nor may laws be so vaguely worded as to lead reasonable people to differ fundamentally over their extension.”**

43. Whereas the Board may well have had proper reasons to act in the manner it did, where its decision is tainted by procedural impropriety the same cannot stand. In **Onyango Oloo vs. Attorney General [1986-1989] EA 456,** it was held that:

**“A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right since if the principle of natural justice is violated, it matters not that the same decision would have been arrived at...It is improper and not fair that an**

executive authority who is by law required to consider, to think of all the events before making a decision which immediately results in substantial loss of liberty leaves the appellant and others guessing about what matters could have persuaded him to decide in the manner he decided...In the course of decision making, the rules of natural justice may require an inquiry, with the person accused or to be punished, present, and able to understand the charge or accusation against him, and able to give his defence. In other cases it is sufficient if there is an investigation by responsible officers, the conclusions of which are sent to the decision-making body or person, who, having given the person affected a chance to put his side of the matter, and offer whatever mitigation he considers fit to put forward, may take the decision in the absence of the person affected. The extent to which the rules apply depends on the particular nature of the proceedings...It is not to be implied that the rules of natural justice are excluded unless Parliament expressly so provides and that involves following the rules of natural justice to the degree indicated...Courts are not to abdicate jurisdiction merely because the proceedings are of an administrative nature or of an internal disciplinary character. It is a loan, which the Courts in Kenya would do well to follow, in carrying out their tasks of balancing the interests of the executive and the citizen. It is to everyone's advantage if the executive exercises its discretion in a manner, which is fair to both sides, and is seen to be fair...Denial of the right to be heard renders any decision made null and void ab initio."

44. In my view before the applicant's Certificate could be withdrawn the 1<sup>st</sup> Respondent had to be satisfied that the provisions of section 5(7) of the Act were satisfied. It is not just enough to contend that the circumstances of the case were considered by the Board.

45. To my mind the factors which the Board purported to have taken into consideration ought to have been presented to the applicant and his version on the same heard before the decision to revoke his firearms certificate was made.

46. It is therefore clear that the manner in which the Board purported to have cancelled the Applicant's Firearms Certificate was tainted with procedural irregularity.

47. Section 11 of the *Fair Administrative Action Act, 2015* provides as follows:

***(1) In proceedings for judicial review under section 8 (1), the court may grant any order that is just and equitable, including an order***

***(a) declaring the rights of the parties in respect of any matter to which the administrative action relates;***

***(b) restraining the administrator from acting or continuing to act in breach of duty imposed upon the administrator under any written law or from acting or continuing to act in any manner that is prejudicial to the legal rights of an applicant;***

***(c) directing the administrator to give reasons for the administrative action or decision taken by the administrator;***

***(d) prohibiting the administrator from acting in a particular manner;***

***(e) setting aside the administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions;***

***(f) compelling the performance by an administrator of a public duty owed in law and in respect of which the applicant has a legally enforceable right;***

***(g) prohibiting the administrator from acting in a particular manner;***

**(h) setting aside the administrative action and remitting the matter for reconsideration by the administrator, with or without directions;**

**(i) granting a temporary interdict or other temporary relief; or**

**(j) for the award of costs or other pecuniary compensation in appropriate cases.**

48. Therefore this Court has the power to set aside the order canceling or revoking the applicant's firearms certificate and to give appropriate directions.

49. As a parting shot however, I wish to restate this Court's position in **Bryan Yongo vs. Chief Licencing Officer & 3 Others [2014] eKLR** that:

***"...a firearm is not a toy. It is a very lethal weapon and as such ought not to be brandished anyhow as if it were a swagger stick or a flywhisk. Those who are privileged to be licensed to hold firearms must exercise utmost responsibility and must guard against careless use of the firearm. Therefore firearm licences ought to be granted only in situations where it is necessary to do so and where the strict conditions for its grant are fulfilled. A firearm in my view is not a symbol of power and ought not to be issued to those who simply want to use the same to intimidate other members of society or to throw their weights around. Where a grantee or licensee of firearm certificate abuses the privilege the same ought to be speedily withdrawn before the society is exposed to the perils and vagaries of firearm abuse."***

50. Before issuing a firearm certificate, it behoves the authorities concerned to follow the laid down procedure in order to ensure that such lethal weapons do not end up in the wrong hands. However after issuing the same, the presumption is that the laid down procedure was duly followed and the same can only subsequently be cancelled or its renewal denied in accordance with the due process of the law which in my view does not allow for shortcuts. This must be so, so that the decision to withdraw or decline the renewal of the certificate is not arbitrarily taken and used as a political weapon with a view to exposing to harm those whose views are deemed to be contrary to the system's or in order to settle personal scores.

51. When a country opts to follow the path the democracy it must be prepared not only to enjoy the fruits therefor but must also be prepared to pay the cost of doing so. As the Court of Appeal appreciated in **Judicial Commission of Inquiry Into the Goldenberg Affair & 3 Others vs. Job Kilach Civil Application No. Nai. 77 of 2003 [2003] KLR 249**:

***"Democracy is normally a messy, and often times, a very frustrating, way of governance. In this respect, dictatorships are more efficient."***

52. We have made a bed and we must lie on it however some people may feel uncomfortable with it. This is the message in Article 2(1) of the Constitution where it is provided that:

***This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government.***

53. In the premises I find merit in the Notice of Motion dated 22<sup>nd</sup> September, 2017.

### **Order**

54. Consequently and pursuant to section 11 of the ***Fair Administrative Action Act*** the orders which commend themselves to me and which I hereby grant are as follows:

**1. An order of certiorari removing into this Court for the purpose of being quashed the decision of the 1<sup>st</sup> respondent revoking the Applicant's Firearm certificate No. 9480 and withdrawing his firearms namely Ceska Pistol Serial Number B 350172 Beretta Pistol Serial Number A0221832 and Glock 19 Gen. 4 Pistol Number YBM880, which decision is hereby**

quashed.

2. **Mandamus compelling the 1<sup>st</sup> Respondent Board to, within 30 days of service of this order, rehear the matter afresh while giving the applicant an opportunity of being heard and make its decision thereon in accordance with the law.**

3. **In default of compliance with the said order an order of mandamus shall issue compelling the 1<sup>st</sup> respondent Board to return the said Firearm certificate No. 9480 and the applicant's firearms namely Ceska Pistol Serial Number B 350172 Beretta Pistol Serial Number A0221832 and Glock 19 Gen. 4 Pistol Number YBM880 (if already confiscated) unless the due process is followed.**

4. **In the circumstances of this case each party will bear own costs of these proceedings.**

55. It is so ordered.

**Dated at Nairobi this 30<sup>th</sup> day of January, 2018**

**G V ODUNGA**

**JUDGE**

**Delivered in the presence of:**

***Miss Mageto for Mr Mutinda for the Applicant***

***NA for the Respondent***

***CA Ooko***