REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW NO. 483 OF 2016

IN THE MATTER OF AN APPLICATION BY ORANGE DEMOCRATIC MOVEMENT FOR LEAVE TO APPLY FOR JUDICIAL REVIEW AND ORDERS OF MANDAMUS

AND

IN THE MATTER OF THE POLITICAL PARTIES FUND ESTABLISHED UNDER THE POLITICAL PARTIES ACT, 2011.

AND

IN THE MATTER OF ARTICLES 1,4(2),10,38,201(A), AND 201(b) (iii) OF THE CONSTITUTION OF KENYA

BETWEEN

ORANGE DEMOCRATIC MOVEMENT (ODM).....APPLICANT

VERSUS

THE NATIONAL TREASURY.....1ST .RESPONDENT

CABINET SECRETARY FOR NATIONAL TREASURY.....2ND RESPONDENT

REGISTRAR OF POLITICAL PARTIES.....3RD RESPONDENT

JUBILEE PARTY.....1ST INTERESTED PARTY

THE NATIONAL ALLIANCE PARTY.....2ND INTERESTED PARTY

UNITED REPUBLICAN PARTY.....3RD INTERESTED PARTY

JUDGMENT

1. By a notice of motion dated 19th January 2017 supported by a statutory statement, the amended notice of motion for leave dated 2nd November 2016, verifying affidavit of Oduor Ongwen sworn on 2nd November 2016, the amended statutory statement dated 2nd November 2016, and skeletal submissions as filed list and bundle of authorities filed on 26th January 2017, the exparte applicant Orange Democratic

Movement (ODM) which is one of the largest political parties in Kenya, an institution established under the political parties in accordance with the Constitution of Kenya seeks from this court the following :

> ***a. Orders of Judicial Review mandamus compelling the respondents herein in the National Treasury; Cabinet Secretary for the National Treasury; Registrar of Political parties and the National Assembly to forthwith allocate, appropriate and disburse to the applicant the sum of kshs 4,135,903,545 and or such other outstanding amount lawfully due to the applicant under the Political Parties Fund; such amount not being not less than 40% of 95% of not less than 0.3 % of the total revenue collected by the National Government during the period between 2012 and 2016 less the sum of kshs 501,575,919 which has been received by Orange Democratic Movement during the same period.***

2. The notice of motion which was instituted pursuant to the leave to apply granted to the exparte applicant on 19th January 2017 is brought under the provisions of Order 53 Rule 3(1) of the Civil Procedure Rules, Sections 8(2) and 9 of f the Law Reform Act Cap 26 Laws of Kenya and all other enabling provisions of the law.

3. The grounds upon which the notice of motion is predicated are as per the amended statutory statement filed together with the amended chamber summons and the verifying affidavit together with annextures thereto.

4. The exparte applicant's case is that it is a duly registered political party established as such pursuant to Article 38 of the Constitution of Kenya and that under Section 25 of the Political Parties Act, it is entitled to receive funds from the Political Parties Fund established under the Act.

5. It is alleged that following the 2013 general elections, the applicant Orange Democratic Movement is entitled to at least 40% of the funds required to be distributed to political parties pursuant to Section 25(a) of the Political Parties Act and that the funding is essential for the purposes set out in the Political Parties Act among others:

> *a.* ***Promoting the representation in Parliament and the County Assemblies of women, persons with disabilities, youth, ethnic and other minorities, and marginalized communities;***
>
> *b****. Promoting active participation by individuals citizens in political life;***
>
> *c. Covering its election expenses and the broadcasting of its policies;*
>
> *d. The organization by the applicant of civic education in democracy and other electoral processes;*
>
> *e. Bringing the applicant's influence to bear on the shaping of public opinion; and*
>
> *f. Administrative and staff expenses of the applicant political party*.

6. It is further claimed that the Political Parties Fund is by law entitled to receive from the National Government such funds being not less than zero point three(0.3.%) per cent of the revenue collected by the National Government as may be provided by Parliament; and contributions and donations to the fund from any sources.

7. It is further alleged that contrary to the stipulations under the Act, and since the establishment of the fund in 2011, the fund has been receiving from the National Treasury only 0.03% of the revenue collected by the National Government.

8. Further, that the total revenue collected by the National Government for the years 2012/2013; 2013/2014; 2014/2015 and 2015/2016 financial years is approximately kshs 4,284,478,321 hence in accordance with the Act**, at least** shs 12,853,436,185.00 being 0.3% of the national revenue ought to have

been disbursed to the Political Parties Fund for distribution to the Political Parties of which the applicant herein would be entitled to receive 40% for the said period.

9. The applicant alleges that contrary to the Act and its legitimate expectation, the applicant has todate received only kshs 501,575,919 during the said period and that the outstanding amount of 4,135,903,545 is due, based on the total national revenue collected.

10. According to the exparte applicant, the failure, refusal or neglect to allocate, appropriate and or disburse all the funds due to the applicant undermines democracy, the Rule of Law, and the objectives for which the Fund was established.

11. That such failure further undermines the Constitution and the sovereign power of the people and democratic governance in that the rights of citizens to make political choices guaranteed under Article 38 of the Constitution are also contravened and undermined.

12. The applicant claims that due to the under finding, it had been unable to forecast and plan its activities and undertake its core mandate to achieve its objectives including preparation for the just concluded August 8th General Elections.

13. It is therefore claimed that the respondents inactions are illegal and unconstitutional and ultra vires the Constitution and Political Parties Act, for they have unlawfully allocated, appropriated or disbursed funds less than the amount stipulated in law. It is claimed that the respondents have no power or authority to determine how much to allocate ,appropriate or disburse to the Fund when the amount is established by law and therefore their actions are irresponsible, arbitrary, capricious and unreasonable, and only intended to frustrate and undermine the applicant's ability to execute its constitutionally enshrined mandate by weakening its power and ability to operate, grow and participate meaningfully in this country or to bring its influence to bear on the shaping of public opinion, by starving it of the funds required to operate, which renders the decision unjustifiable and unacceptable in a democratic society.

14. In support of the motion is a verifying affidavit annexing copy of registration of the applicant as a political party; summary of results of the 2013 Presidential general elections and members of County Assembly, Parliament and Governors; A table showing the qualifying number of votes; A table showing revenue collected for the period 2010/2011-2015/2016 financial years and the amounts released to the Political Parties Fund; A table showing what has been received by the applicant and what is outstanding over the period 2011/2012 to 2015/2016 financial years; letters/reports/correspondence with the Registrar of Political Parties(RPP); and the Auditor General's reports for the said period.

15. The notice of motion was opposed by the respondents. The 1st and 2nd respondents were represented by the Honourable Attorney General who filed grounds of opposition dated 2nd February 2017 contending that: There is no specific legal duty owed by the 1st and 2nd respondents to the applicant and as such the order of mandamus cannot issue in the circumstances; The prayer sought in the application is too general and vague as it fails to disclose to the court what end the Judicial Review remedies of mandamus would be applied; There is no clear reliefs sought against the 1st and 2nd respondents as the application is neither here nor there; The application as drawn and taken out is incurably defective, incompetent and is otherwise an abuse of the court process; The application is based on contradictory allegations which borders on mere belief, suspicion and speculations and hence incapable of any Judicial Review determination.

16. On behalf of the third respondent, a replying affidavit was sworn by Juliet Murimi, as Assistant Director Compliance who deposed on 31st January 2017 that she is cognizant of the legal issues raised by the applicant but that the Role of (the Registrar of Political Parties) is to administer the Fund as stipulated in the law and which role the Office has played by distributing and funds received and allocated to it by Parliament to the qualified political parties in line with the criteria set out in Section 25 of the Political Parties Act.

17. The third respondent does not dispute the applicant's right towards the fund as stipulated in the Act but states that it does not have joint responsibility with other respondents/institutions in carrying our various responsibilities and moreso, that it has no statutory or constitutional duty to allocate and appropriate funds to Political Parties Fund and that if there was failure to allocate and appropriate the minimum amount as stipulated in law, the failure is not on it as that duty is vested upon Parliament.

18. For the above reasons, it was contended that the 3rd respondent cannot be compelled to perform a role that does not belong to it hence mandamus cannot stand against her as she had not been asked to perform a public duty which demand has been met with refusal, failure or neglect with regard to the Political Party Fund.

19. The 3rd respondent annexed copies of correspondence between her and various government agencies with regard to the allocation of the funds as stipulated in the law. She urged the court to dismiss the applicant's motion.

20. The 4th respondent, the National Assembly filed grounds of opposition dated 2nd February 2017 on 3rd February 2017 contending, among others, that under Article 206(2) of the Constitution, money can only be withdrawn from the Consolidated Fund in accordance with an appropriation Act enacted by Parliament.

21. That Article 95(4) (b) of the Constitution gives Parliament the sole mandate to appropriate funds for expenditure by the National Government and other state organs hence what the applicants herein seek is to usurp powers of the National Assembly to appropriate funds for expenditure.

22. The 4th respondent asserted that the budget process is guided by policy and is long, researched and consultative hence this court should restrain itself from interfering with the legislative will of Parliament.

23. Further, that appropriation of funds requires that limited public resources available be availed to the competing interests including equitable sharing between the national and county governments, the need for affirmative action and special consideration for marginalized areas.

24. In addition, it was contended that there was no proof of entitlement to 40% of the Political Parties Fund hence the case herein is founded on conjecture.

25. It was further contended that the Appropriation Act of Parliament cannot be challenged by Judicial Review which latter is a remedy in administrative law challenging administrative actions of a public body.

26. In addition, it was contended that legislation can only be challenged on grounds of unconstitutionality which is lacking in the present case.

27. Further that the orders sought herein if granted will violate the principle of separation of powers, independence of Parliament (National Assembly) hence the motion should be dismissed.

28. The interested parties, The National Alliance Party and the United Republican Party never participated in these proceedings despite being served with pleadings.

29. All the participating parties' counsels filed skeletal submissions which they highlighted orally on 6th February 2017, relying on constitutional, statute and case law decided to advance their respective positions in the matter.

30. Miss Soweto counsel for the exparte applicant assisting Senior counsel Honourable Senator James Orengo submitted reiterating their submissions filed on 26th January 2017 and replying on the filed bundle of authorities in support of the motion as supported by the statutory statement, verifying affidavit and annexed documents.

31. According to the exparte applicant's counsel, mandamus order sought is based on law and statutory duty. Reliance was placed on **Shah V Attorney General[1970] 1 EA 543** where the court held that mandamus is issued to compel the performance of a public duty where the obligation arises out of official status of the respondent and that it is /applicable in cases where the duty is imposed by law for the benefit of an individual provided there is no more appropriate alternative remedy.

32. Further reliance was placed on **Jotham Mulati Welamondi v Electoral Commission of Kenya, Bungoma HC Miscellaneous Application 81/2002** where it was held that mandamus is issued to compel the performance of a public duty.

33. It was submitted that this case is premised on statutory provisions of the Political Parties Act and that none of the respondents had challenged the duty imposed on the respondents by the Political Parties Act more specifically by dint of Sections 23 and 24 of the Political Parties Act which establishes the Fund, the Administrator of the Fund and lays down sources of the monies in the Fund and how much is to be paid out to the qualifying Political Parties.

34. It was submitted that Revenue is collected by the National government pursuant to Chapter 12 of the Constitution and the duty of the 1st and 2nd respondents is to collect and allocate the funds where it is due.

35. It was submitted that Section 24(1) of the Political Parties Act empowers Parliament to provide for the funds in line with Article 95 of the Constitution which funds are then appropriated for use by the National Government and other organs of the State and Parliament then exercises oversight role over every expenditure.

36. It was submitted that the National Assembly is responsible for allocation and appropriation of funds and must demonstrate that they have performed their duty. That under Article 206 of the Constitution, the Government cannot draw money from the Consolidated Fund unless Parliament appropriates it and that only Parliament can authorize withdrawal of money.

37. It was submitted that on the whole, Revenue collected by the National Government is ascertainable and verifiable and moreso, that it is the duty of the 2nd respondent to clarify to this court how much National Revenue has been collected and whether the figures filed by the exparte applicant are correct or incorrect otherwise the court must presume that the figure claimed by the exparte applicant is the correct amount.

38. It was submitted that the 1st and 2nd respondents cannot fold their hands and say that another court should establish what the National Revenue is.

39. It was submitted that public officers who are to obey the law refuse to be accountable to the people they serve. It was submitted that if the 1st and 2nd respondents contest the amounts of money stated by the applicant then they must state what/which amount is due otherwise the court must find that the amount claimed is the amount due; otherwise the respondents are stopped from denying that there is any duty owed under the law.

40. Counsel For the applicant referred to the budget presentation to the Parliamentary Committee on Justice and Legal Affairs in May 2015 for the 2015/2016 Budget by the Registrar of Political Parties and maintained that there had been correspondence between the Registrar of Political Parties and the National Treasury on the matter hence the 1st and 2nd respondents cannot feign ignorance of or lack of duty to act since parties are well aware of their obligations under the law.

41. Counsel clarified that what the applicant was asserting was NOT that the Political Parties Fund was not being administered but that the administration thereof is not being done in accordance with the law, in the sense that, what has been allocated to the Fund has been less than the 0.3% of the Revenue collected by the National Government, out of which the exparte applicant is entitled to 40% of the 0.3 % remitted to the Political Parties Fund less 5% due to the office of the Registrar for administration of the Fund, in

accordance with Section 25 the Political Parties Act which sets out the criteria for allocation of the fund which is 95% less 5% administrative fees Office of Registrar Political Parties.

42. In their view, the applicant has established where the duty lies and which party owes which duty, and which duty has not been denied and further, that the applicant's right to demand for performance of that duty has crystallized.

43. In the view of the applicant, the 4th respondent National Assembly seems to have perceived this matter to be a constitutional matter which it is not. Miss Soweto attacked the failure by the 1st, 2nd and 4th respondents to file replying affidavits, yet the applicant is not challenging any legislation or constitutionality of the appropriation process but rather, to enforce the constitutional and Political Parties Act provisions. Several authorities were filed and relied on by the exparte applicant's counsel.

44. Miss Soweto urged the court to allow the motion with costs.

45. On behalf of the 1st and 2nd respondents, Mr Munene submitted relying wholly on the grounds of opposition and submissions filed on 6th February 2017 and urged this court to dismiss the motion filed by the exparte applicant.

46. In the view of the 1st and 2nd Respondents, the amount claimed by the respondent requires evidence before a civil court to be adduced and a determination made otherwise as matters are, it is not clear how much money was collected from 2012 todate. Mr Munene submitted that Judicial Review does not look at the merits and that the prayers as crafted are vague because there is no specific duty imposed on the 1st and 2nd respondents to pay any money to the applicant.

47. In addition, it was submitted that there was no allegation of illegality, irrationality and or procedural impropriety against the respondents.

49. The 3rd Respondent did not attend court at the oral hearing of this matter.

50. In opposing the motion on behalf of the 4th respondent, Mr Mwendwa advocate for the National Assembly submitted relying on its grounds of opposition dated 12th January 2017 and a list and bundle of authorities and written submissions dated 8th February 2017 and supplementary authorities while fully adopting he submissions of the 1st and 2nd respondents and highlighted by Mr Munene.

51. According to Mr Mwendwa, the matter herein may be a proper claim but it is brought before a wrong court, speculative and seeks for money had and received by the 1st, 2nd and 3rd respondents for and on behalf of the exparte applicants. That albeit the applicant gives a breakdown of the amount claimed, it is not clear as to who determined that the money in question is owed to the applicant since the authenticity of the documents supplied to court is in doubt.

52. It was submitted that there is an appropriate remedy in another court hence this court should decline to exercise the discretion in favour of the applicant.

53. It was submitted on behalf of the National Assembly that the role of the 4th respondent is to approve and oversight but with no legal duty to pay any money to the applicant.

54. In addition, it was submitted that Parliament does not exercise administrative authority and that the applicant had not proved the unconstitutionality perpetuated by the 4th respondent. Reliance was placed on **HCC JR 288/2012** between the **Republic vs the Attorney General & Parliamentary Service Commission Exparte Wanyiri Kihoro & 5 Others [2014] e KLR** where Majanja J held inter alia that the court cannot issue an order of mandamus whose effect is to direct the legislature to amend an Act of Parliament since Article 94(5) of the Constitution reposes the law making authority of the state in Parliament and it is the responsibility of Parliament to pass the necessary legislation to implement the

recommendation of the Akiwumi Report hence an order of mandamus cannot be issued in the circumstances.

55. In Mr Mwendwa's view, the issue at hand is a policy issue as stated in Section 24(1) (a) of the Political Parties Act and that we cannot determine revenue collected from 2012 to 2016.

56. It was further submitted that a person who has been wronged by a Parliamentary Process cannot seek for Judicial Review. Reliance was placed on **Polycarp Wathuta vs County Government of Kirinyaga [2014] e KLR** and a submission made that what the applicant is seeking before this court is inviting this court to encroach unnecessarily and prematurely on the legislative functions of the National Assembly.

57. Counsel for the 4TH Respondent submitted that financial budgeting is a public policy question done annually and undertaken by Parliament which this court should take judicial notice of. Further, that even if the court found the amount quoted as correct, the court should exercise discretion and decline the orders as it will not be in the interest of the Republic to order payment of these monies without proper proof before the relevant courts. Mr Mwendwa urged the court to find the application incompetent and dismiss it with costs to the 4th respondents.

58. In a rejoinder, Senior Counsel and Senator James Orengo on behalf of the exparte applicant submitted that Parliament is not above the law and that the principle of parliamentary sovereignty as is in England does not exist in Kenya.

59. That Parliament has no freedom to disobey laws which it makes. Senior Counsel maintained that the figures placed before the court are not speculative as they are fortified by the Auditor General's reports on appropriation accounts, other public accounts and accounts of the Republic of Kenya, including Political Parties Fund. Further, that the respondents had not rebutted the evidence adduced by the exparte applicant. Reference was made to a letter of 21st July 2014 by the Attorney General advising on the matter. It was submitted that the Political Parties Act places an obligation on Parliament and the respondents and that is why the relevant Sections of the Political parties Act refers to amount collected which is actual revenue as opposed to money appropriated.

60. It was submitted that the money being claimed through mandamus is not money had and received but money collected as revenue which Parliament then appropriates in accordance with the Constitution and that in appropriating, Parliament must provide for all funds provided in the Constitution.

61. Senior counsel referred the court to Part 5 of the Constitution on the shared responsibilities between the Parliament and the National Treasury unlike prior to 2010 when Parliament's role was only legislative but that currently, Parliament receives estimate revenue and expenditure from the National Treasury for appropriation.

62. In the instant case, it was submitted that Parliamentary functions and role s go beyond the legislative functions and that although it has been receiving estimates on revenue and expenditure and appropriating the funds, but that it has not been appropriating the same as mandated by the Political Parties Act.

63. It was also submitted that the Registrar of Political Parties had even conceded owing the money to Political Parties but clarified that the National Treasury had not included the money in the estimates and Parliament had not appropriated hence the duty upon all the respondents individually and collectively.

64. It was submitted that the Constitution of Kenya mandates '*every person*', public body, state organ to obey the law and therefore the National Assembly and Treasury cannot escape the obligation to appropriate funds.

65. It was submitted that the **Polycarp Wathuta Kanyungo & 2 Others vs County Government of Kirinyaga [2014] e KLR** case was not the same as this case because in that case the County Assembly passed a law increasing rent and so the applicant was under an obligation to go by the rates established by law in Kirinyaga.

66. On the reference to the Haron Mwau case(supra) it was submitted that the case was decided before 2010 and has a narrow approach to the Constitution.

67 .Senior Counsel for the applicant maintained that mandamus is available to the applicant because they had established a duty under the law and authorities cited are in their favour and that they had demonstrated that there was an illegality because Parliament had failed to appropriate funds for the National Government as stipulated in law hence a case had been made out for the issue of mandamus to compel the performance of a public duty which is stipulated in law and which is beyond the realm of policy.

DETERMINATION

68. I have considered the exparte applicant's sole substantive Judicial Review prayer for the remedy of mandamus, the responses by the 1st, 2nd, 3rd and 4th respondents and the parties' advocates respective submissions supported by constitutional, statutory and case law cited. In my humble view, the issues that flow for determination are:

1. Whether the Judicial Review remedy of mandamus is available in the circumstances of this case.

2. Whether the exparte applicant has made out a case for Judicial Review remedy of mandamus to issue as prayed and if so,

3. What orders should this court make?

4. Who should bear the costs of this case?

69. On the 1st issue of whether the Judicial Review remedy of mandamus is available in the circumstances of this case, it is first and foremost critical to appreciate the nature of the Judicial Review remedy of mandamus in the context of both administrative and constitutional law.

70. Judicial Review is the power of court intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made lawfully, and not to check whether choice or decision is 'sound.'

71. By Judicial Review, the court is given the power to check on the arbitrariness of exercise of power. As stated by Aristotle, power corrupts, and absolute power corrupts absolutely.

72. Without the Judicial Review power, most governments would have eaten the democracy and will of the people worldwide. Judicial Review checks the executive and legislative actions whenever such actions or inactions are in excess of the legal authority. In some civil law jurisdictions, Judicial Review is used to stem the tyranny of the majority.

73. The Court of Appeal addressed the scope of the judicial review remedy of mandamus in **CA 266/1996 [1997] e KLR in Kenya National Examinations Council vs Republic Exparte Gathenji & Others** as follows; citing with approval **Halsbury's Laws of England, 4th Edition VOL 7 page 111 at paragraph 89:**

" ***The order of mandamus is of a most extensive remedial nature and is in form, a command issuing from the High Court of justice directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing there in specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.***

The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once, where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way. What do these principles mean? They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect duty to be performed."

74. As was correctly observed by Majanja J in **Republic vs Attorney General & Another Exparte Wanyiri Kihoro & 5 Others [2014]eKLR**, an order of mandamus will not issue as a matter of course. In order for the applicants to succeed in the matter they must demonstrate that the respondents failed to perform a constitutional or statutory duty. Mandamus issues to compel a person or body of persons to perform a particular duty imposed on him or them by the Constitution or statute and which duty he has refused to perform to the detriment of the applicant [**Republic vs Attorney General & Another Exparte Wanyiri Kihoro & 5 Others [2014]eKLR]** citing with approval **Jotham Mulati Welamondi v The Electoral Commission of Kenya [2002] 1 KLR 486.** It cannot issue to compel the exercise of discretionary power let alone the exercise of such power with a view to arriving at a particular result.

75. Unlike in the **Wanyiri Kihoro** (supra) case, the exparte applicant's case is hinged on the complaint that despite the provisions of Sections 23,24 and 25 of the Political Parties Act making it clear that the applicant as a political party is entitled to receive funds from the Political Parties Fund established under the Act and which Fund is admittedly administered by the 3rd respondent Registrar of Political Parties, the 1st and 2nd, 4th respondents have refused to allocate appropriate and disburse to the applicant the sum of kshs 4,135,903,545.00 which sum represents 40% of the 95% of not less than 0.3% of the total revenue collected by the National Government during the period 2012 and 2016 less kshs 501,575,919.00 which has been received by the exparte applicant during the same period. The exparte applicant therefore prays that the respondents should be compelled to perform their constitutional and statutory duties.

76. It must be clearly understood, from the onset that the applicant is not seeking for orders to have any statute declared unconstitutional or inconsistent with the Constitution as was the case in **Political Parties Forum Coalition & 3 Others vs Registrar of Political Parties & 8 Others [2016] e KLR.**

77. The applicant is saying that it has a legal right to be paid the sums mentioned and that the respondents have a legal and constitutional duty to ensure that it is paid the said sums as and when they are due during each financial year. Section 24(1) of the Political Parties Act stipulates:

24(1) the sources of funds are:

Such funds not being less than zero point three percent of the revenue collected by the National Government as may be provided by Parliament.

78. In **Political Parties Forum Coalition & 3 Others vs Registrar of Political Parties & 8 Others** (supra) the Court of Appeal stated:

" ***A literal reading of Section 24(1) of the Political Parties Act clearly demonstrates that the funds allocated to the Political Parties Fund shall not be less than 0.3 % of the revenue collected by the national government. The Section envisages the Parliament may allocate additional funds to the Political Parties Fund but a minimum floor ceiling of 0.3 % has been enacted. Article 95(4) (b) of the Constitution as read with Article 221 thereof provides that the role of the National Assembly includes appropriation of funds for expenditure by the National Government and other national state organs.***

The money to be appropriated and allocated to the Political Parties Fund is done by Parliament.

In our considered view, the 1st respondent(Registrar of Political Parties) has no constitutional or statutory duty to allocate and appropriate funds to the Political Parties Fund. If there is any failure to allocate the minimum funds as stipulated, the failure is not by the 1st respondent. The duty to allocate and appropriate funds is neither vested upon the 1st respondent nor upon the Attorney General. We find that the 1st respondent is not under an obligation to ensure that .3.% of the government revenue is allocated to the Political Parties Fund. We reiterate that the duty to allocate and appropriate funds is vested upon Parliament and Parliament is not a party to this suit to offer explanation why 0.3% of the government revenue was not allocated to the Political Parties Fund."

79. From the above provisions and decision of the Court of Appeal, I have no hesitation in finding that the remedy of Judicial Review order of mandamus would be available in the circumstances of this case for clear reasons that the applicant has demonstrated beyond peradventure that it has a legal right to a share of the Political Parties Fund established under Section 23 of the Political Parties Act and which Fund divisible in accordance with the thresholds established under the Political Parties Act.

80. The applicant has also demonstrated that there exists a legal duty on the part of the 4th respondent to allocate and appropriate national revenue to the Political Parties Fund from the sources stipulated in the Act, such funds not being less than 0.3% of the revenue collected by the National Government.

81. In the instant case, there is overwhelming evidence that the 3rd respondent Registrar of Political parties and administrator of the Political Parties Fund kept reminding the National Treasury to release funds as stipulated in the Act.

82. Even the Attorney General provided an legal advisory to the National Treasury and Parliament on whether it was *discretionary* to allocate, appropriate and disburse funds for purposes of disbursement to the eligible Political Parties and gave an answer that clearly state that it is *mandatory* in terms of the spirit and letter of the Act.

83. The Role of the Attorney General is not merely advisory to the relevant government agencies imploring them to ensure that the Fund has no less than 0.3 % of the projected ordinary revenue. The Attorney General has a constitutional mandate to advise the national Government and other government agencies and therefore his advice being legal advise, unless the government or its agencies provide an alternative interpretation of what they believe to be the legal position as opposed to what the Hon Attorney General has given in his advise, it is upon those agencies to comply with the law as stipulated. The National Treasury prepares annual budgetary estimates which are placed before Parliament to allocate and appropriate. It is duty bound to include in its annual estimates, the amount to be allocated and appropriated by Parliament to the Political Parties Fund.

84. Accordingly, and in line with the decision in **Political Parties Forum Coalition case**(supra), I find that the National Treasury and Parliament are under a constitutional and legal duty to ensure that they allocate, appropriate and disburse to the Political Parties Fund not less than 0.3.% of the national revenue collected in any given financial year. The role of the National Treasury, is, undoubtedly, to include in the annual estimates and disburse that which is allocated and appropriated by the National Assembly. It cannot, therefore, be faulted for failing to disburse the 0.3% of the National Revenue collected for the period 2012-2016 as claimed by the exparte applicant.

85. Neither is it the duty of the Registrar of Political Parties to ensure that 0.3% of the collected government revenue is allocated to the Political Parties Fund, since the Office of Registrar of Political Parties only administers what is disbursed into the Fund by the National Treasury, upon allocation and appropriation by the National Assembly.

86. Having found that the National Treasury is under a duty to include in its annual estimates the allocation for the Political Parties Fund, in accordance with Article 221 of the Constitution and that the National Assembly has a legal and constitutional duty to allocate and appropriate 0.3% of the National

revenue into the Political Parties Fund for purposes of administration by Office of Registrar of Political Parties and disbursement to the eligible Political Parties, ***the question is whether the National Treasury and the National Assembly have failed or refused to perform that duty imposed on them by the Constitution and the Political Parties Act.***

87. From the authorities cited above it is clear that the National Assembly has no discretion in allocating and appropriating funds to the Political Parties Fund which is not less than 0.3% of the national revenue received.

88. The 4th respondent filed grounds of opposition contending among other grounds that it is under no legal duty to allocate and appropriate the funds and therefore owes no obligation to the exparte applicant. In addition, the 1,2, and 4th respondents vigorously argued that there is no judgment determining how much money is due to the exparte applicant and therefore the orders of mandamus are premature and unavailable to the exparte applicant.

89. From the record of proceedings and submissions of all parties, this court finds that the exparte applicant went beyond asking for allocation and appropriation of the requisite funds it believes was due to it. It has shown that it is a registered political party which is eligible to benefit by law, from the fund as stipulated in the Political Parties Act. Annexture ODM5 is a schedule showing the three National Parties qualifying for funds as at the time these proceedings were initiated and these are The National Alliance Party (TNA); Orange Democratic Movement (ODM) and the United Republican Party (URP) and out of the shs 370,504,800 received by the Office of Registrar of Political Parties, 40% amounting to 141,014,307 was paid to the exparte applicant herein. That document showing payments , and whose source is indicated as the Independent Electoral and Boundaries Commission (IEBC) was never challenged by the respondents by way of an affidavit of rebuttal or at all.

90. The exparte applicant also produced exhibit ODM3 which is the summary of the report of the Auditor General on the Appropriation Accounts, other public accounts of the Funds of the Republic of Kenya for the years 2011/2012, 2012/2013, 2013/2014, 2014/2015, 2015/2016 in that order and from the signed reports of the Auditor General which is a constitutional Independent Office governed by Chapter 15 of the Constitution, which is an office mandated to audit all public funds with the aim of promoting accountability in the public sector. It is clear that a total of summaries of the financial statements for the National Government shows total ordinary revenue received for the period 2012-2016, after the provision of Section 25 of the Political Parties Act came into force as being

1) 2011/2012 for the financial year ended 30th June 2012 = 761,682,773,420 (page 50(iv).

2) 2012/2013 for the financial year ended 2012/2013= 813, 222,666,2010 (page 105(4)).

3) 2013/2014 for the financial year ended 30th June = 966, 898,693,41.

4) 2014/2015 = 1,084,849,042,367

91. Out of the above sum, Section 25 of the Political Parties Act mandates that not less than 0.3% of the said national revenue collected to be allocated and appropriated to the Political Parties Fund to be administered by the Registrar of Political Parties annually, and out of which 95% would be disbursed to the eligible political parties during that period namely. Five percent 5% of the fund is left with the Office of Registrar of Political Parties for administration.

92. Exhibit ODM-6 at page 294 of the exparte applicants Chamber summons for leave is a summary of distribution of the Political Parties Fund from 30th June 2010 to 30th June 2016 which shows that from the time Section 25 of the Political Parties Act came into force***, 0.03%*** of the national revenue collected, and not 0.3% stipulated in the Act have been allocated and appropriated to the political Parties Fund.

93. The question is whether the National Assembly has been mislead into believing that 0.03% is one and

the same as 0.3% of the National Revenue collected to be allocated and appropriated to the Political Parties Fund and if so, by who and with what objective?

94. The rest of the exhibits produced by the exparte applicant show the exparte applicant applying to the Office of Registrar Political Parties for funding and complaining that the findings are in total breach of the Political Parties Act, 2012 and which had affected the party to fully realize its core mandate under the Act, and asking Office of Registrar of Political Parties to seek more funds in accordance with the Act. Which expressly stipulates that the National Assembly must allocate and appropriate not less than 0.3% of the revenue collected by the National Government to the Political Parties Fund.

95. This therefore means that Parliament is at liberty, only, in as much as any figures exceeding 0.3% is concerned. It does not enjoy any discretion to allocate and appropriate any amounts less than 0.3% and therefore any action or inaction that would starve the Political parties Fund of less than 0.3% of the collected National Revenue would be in violation of Section 25 of the Political parties Act.

96. The National Assembly has not, by way of an affidavit denied the figures above as stipulated in the reports of the Auditor General for the period concerned. The National Assembly and the National Treasury have not given any alternative figures. Instead, grounds of opposition and submissions were made by their counsels Mr Mwendwa and Mr Munene contending that Parliament is independent and that the courts cannot compel it to obey the law. Mr Munene on the other hand maintained that there was no obligation for the Treasury to disburse to the applicant the sums claimed.

97. Parliament enacts the law. It must obey that law which it has enacted. It is not above that law and unless and until it amends that law, it must be prepared to obey it to the letter and spirit. On the other hand, the National Treasury which receives and makes budgetary proposals to the National Assembly through a consultative process of public participation must ensure that the law is complied with regarding the proposals made to the National Assembly. It is not expected to make proposals that fall below the statutory stipulations with regard to monies that ought to be allocated and appropriated by Parliament to the various Funds such as the Political parties Fund.

98. The contention that there are competing interests for national revenue does not hold any water as the makers of the Political Parties Act and who are the members of Parliament and the Political Parties were and are still alive to that fact. There is no demonstration by the 4th respondent that it was unable to allocate/appropriate 0.3% of the total revenue received for the years in question because of competing interests or the national government revenue, or that the allocation would have adversely affected the effective functioning of the government as a whole.

99. On the part of the National Treasury, there is no evidence that it made proposals in line the provisions of the Political Parties Act but that Parliament ignored the same.

100. The evidence on record shows that the Registrar of the Political Parties herself has on several occasions as per exhibit ODM 4 on page 300 of the applicant's application made it clear that Section 25 of Political Parties Act, 2011 provides for the criteria for disbursement of the Political Parties Fund and that her Office had disbursed the funds allocated in accordance with the Act.

101. I agree that the Office of Registrar of Political Parties is only but a conduit through which the Fund is disbursed to the qualifying political parties. The power to allocate and appropriate is given to the National Assembly which has simply failed and or refused and neglected to allocate and appropriate the correct amount. That amount cannot be determined by any other court in the name of a civil debt as it is not money had and received. It is money that is available as commanded by statute, based on actual revenue collected in a given financial year.

102. In my humble view, therefore, there is no other avenue by which the applicant would seek compliance with the statute but by way of Judicial Review orders of mandamus to compel Parliament to comply with the statutory duty imposed on it to allocate and appropriate not less than 0.3% of the national revenue received, to the Political Parties Fund out of which 95% thereof would be disbursed to the

eligible Political Parties and in that instance, the exparte applicant would then be entitled to its lawful share of the 95%.

103. In the presentation dated May 2015 by Office of Registrar of Political Parties of the 2015/2016 budget to the Parliamentary Committee on Justice and Legal Affairs, the Registrar of Political Parties at page 306(EX ODM4) made it clear at paragraph 2 on Programmes and Projects (ii) funding or Political Parties that:

> ***"The office administers the fund in accordance with the Act. The budget allocation to the fund by the National Treasury has been below 0.3% of the National Revenue as stipulated by the Political Parties Act, 2011. However, the allocation has continued to increase from 205.2 in 2013/2014 to 360 million in 2014/2015 and kshs 367 million in 2015/2016 respectively. The office has continued to petition the National Treasury on this matter."***

104. At page 309/310 of the presentation, the Registrar of Political Parties highlights the challenges while discharging her mandate and key among them are Political Parties Fund where she states:

> ***" Section 24 of the Political Parties Act, 2011 stipulates that the Fund will receive " such funds not below zero point three percent of the revenue collected by the National Government or as may be provided by Parliament." In the last financial year the fund was allocated shs 360 million which is far below the percentage provided for in the Act. The office wrote to the National Treasury on this matter.***
>
> ***Currently, three Political Parties are funded in line with the Act. This may change if the Political Parties (Amendment) Bill is actualized."***

105. At page 314 of the same exhibit is a summary of Programme Implementation Matrix for 2015/2016 - 2017/18 financial years and page 315 is where the Office of Registrar of Political Parties indicates that the current allocation of 367 million was much below the stipulated in the Act.

106. Surprisingly, the National Treasury and the National Assembly did not and have never attempted to respond to that issue and or complaint by the Office of Registrar of Political Parties until this matter was lodged in court.

107. The applicant has also annexed all acknowledgment receipts for the disbursed funds less the stipulated sums as per the Act.

108. In my humble view, once the total revenue collected by the National Government is known like in the instant case and as shown by the reports of the Auditor General which have not been disputed, the applicant was not required to seek redress from any other avenue for allocation and appropriation of the funds but from the court seized of Judicial Review jurisdiction by way of mandamus to compel the release of the sums due as stipulated in the Act.

109. In my view, there is no speculation here by the applicant as the National Revenue collected for the period in issue is in black and white.

110. Judicial Review order of mandamus as clearly stated in **Shah vs Attorney General No. 3 Kampala HC Miscellaneous 31/1969 [1970] EA 543,** issues ***to compel the performance of a public duty where the obligation arises out of the official status of the respondent. It is applicable in cases where the duty is imposed by law for the benefit of an individual provided there is no more appropriate alternative remedy.***

111. This court is unable to locate an appropriate alternative remedy for the exparte applicant who has all along received the disbursed allocation under protest for reasons that the same was in violation of Section 24 of the Political Parties Act.

112. Nonetheless that violation does not fall on the Office of Registrar of Political Parties but on the National Assembly which holds the key to the appropriation of the national purse and disbursed through the National Treasury.

113. Similarly, the National Treasury is only an agent of the principal. The principal owner of the funds/National Revenue is the National Assembly on behalf of the people of Kenya and which is commanded by the Act, which is its own enactment to allocate and appropriate not less than 0.3% of the national revenue collected into the fund.

114. After the allocation and appropriation, the National Treasury is then authorized to disburse to the various destinations, the Office of Registrar of Political Parties included, for onward transmission to the eligible Political Parties. The money being sought herein is therefore not a favour to the Political Parties Fund. It is by law established that the Fund should not be starved of the resources which Parliament has said should be fed in the Fund for distribution in the manner stipulated in the Act.

115. Article 92 of the Constitution is what empowers Parliament to enact legislation on the establishment of the Political Parties Fund and the monies to be disbursed therein and how that money is to be utilized by Political Parties. If Parliament feels that the Parties Fund as currently enacted is burdensome, the prudent thing to do is to fall back and review it.

116. It has not been shown that the National Treasury has refused to release to the Office of Registrar of Political Parties(Political Parties Fund) the allocated/appropriated sum. The National Treasury, just like Office of Registrar of Political Parties have, as agents of the National Assembly, done their part of preparing budgetary proposals but as I have said, the only failure on the part of the National treasury is the failure to demonstrate that in the budgetary provisions or the years stated, it made provision for the 0.3% of the total revenue collected to the Political Parties Fund.

117. It is therefore not clear why the National treasury has been disbursing 0.03% of the collected National Revenue for disbursement, and not 0.3%. This is evidenced in the correspondence between the applicant and Office of Registrar of Political Parties and the National Treasury and communication to the Parliamentary Committee on Justice and Legal Affairs.

118. The duty to allocate and appropriate not less than 0.3% of the National Revenue collected in any given year is a statutory duty imposed on the National Assembly. It follows that as was held in **Jotham Mulati Welamondi v ICK Bungoma HC Miscellaneous 81/2002*, mandamus would issue compelling a person to perform a public duty imposed on him by statute which duty he has refused to perform to the detriment of the applicant.*** Statutes are enacted by Parliament and as to whether the said Parliament can be allowed to violate the very law that it has enacted, moreso when majority of members of Parliament are also bonafide members of the Political Parties in issue, save for the Independent members, the case of **Republic vs Public Procurement and Advisory Review Board & Another Exparte Selex Sistemi Integrati Nairobi HC Miscellaneous Application 1260/2007** is relevant where Nyamu J (as he then was) stated :

> ***"To exempt a public authority from the jurisdiction of the courts of law is, to that extent, to grant dictatorial powers. It is no exaggeration, therefore, to describe this as an abuse of power of Parliament speaking constitutionally. This is the justification for the strong, it might even be rebellious stand which the courts have made against allowing Acts of Parliament to create pockets of uncontrollable power in violation of the rule of law. Parliament is unduly addicted to this practice giving too much weight to temporary convenience and too little to constitutional principle.***
>
> ***The laws delay together with its uncertainty and expense, tempts governments to take shortcuts by elimination of the courts. But if the courts are prevented from enforcing the law, the remedy becomes worse than the decease."***

119. In a more recent decision of the Supreme Court between **Zakaria Okoth Obacho v Edward**

Okong'o Oyugi & 23 Others [2014] e KLR the apex court emphasizes that:

> ***" Article 3(1) of the Constitution imposes an obligation on everyone without exemption, to respect, uphold and defend the Constitution. This obligation is further emphasized with regard to the exercise of judicial authority, by Article 159(2) which requires that in the exercise of judicial authority the courts must pay heed to the purposes and principles of the Constitution being protected and promoted.***
>
> ***However, all statutes flow from the Constitution lest they be declared unconstitutional, hence null and void. Thus it cannot be said that this court cannot stop an unconstitutionally guided process."***

120. As earlier stated, this court has not been called upon to find and hold that the Political Parties Act, 2011 is unconstitutional but that failure to comply with the dictates of that Act which was enacted in accordance with the constitutional dictates would be unlawful and unconstitutional and that calls for checks and balances by this court intervening by way of Judicial Review remedy of mandamus.

121. It cannot be said that compelling Parliament to act in accordance with the law amounts to interference with powers of Parliament. Parliament like all public institutions, including the judiciary and executive, have no absolute power. Absolute power belongs to the people of Kenya who have through their will which is the Constitution, delegated it to Parliament, judiciary, executive and other state organs and agencies to exercise on their behalf.

122. Judicial Review remedy is an enforcement tool of constitutionalism, and one of the greatest promoters of the rule of law and arbitrariness(see **Republic vs Commissioner General Kenya Revenue Authority Nairobi JR 340/2012** cited with approval in **Re Bivac International SA Bureau Veritas.**

123. In my humble view, power to allocate and appropriate to the Political Parties Fund not less than 0.3 % of the National Revenue collected is not a discretionary power. This point is fortified by **Republic v Secretary of State for Home Affairs Department Exparte Venebles [1998] AC 407** where the court held (persuasively):

> ***"a person on whom power is conferred cannot fetter the future exercise of its discretion by committing himself how as to the way in which he will exercise his power. By the same token, the person on whom power has been conferred cannot fetter the way in which he will use that power by ruling out of consideration on the future exercise of power, factors which may be relevant to that exercise."***

124. In other words, the body that is mandated by statute and the Constitution to exercise power in a specific way such as to allocate and appropriate not less than 0.3% of the national revenue collected to the Political Parties Fund cannot fetter that power and allocate less, without giving any legal justification. To do so would be abusing that power and the court would be called upon to investigate into the matter to establish whether he legal duty is being performed in accordance with the law and this is exactly what this court has done, by entertaining the prayer for judicial review remedy of mandamus to compel the fulfillment of a public legal duty imposed by statute and whose fulfillment some other person (the exparte applicant) has a legal interest.

125. This court was not told by the National Assembly that it had legislated contrary to any law or public policy hence it was not bound to obey the laws (Political Parties Act) that it had enacted on behalf of the people of Kenya. Neither is there any attempt to suggest that that law is unjust or contrary to express or implied constitutional provisions.

126. It therefore follows that Parliament is bound to implement the Political Parties Act as enacted to the letter. The not less than 0.3 % of the collected national revenue in each financial year is ascertainable and therefore there is no reason why only 0.03% of such revenue was given to the Political Parties Fund instead of a minimum of 0.3%, unless such allocation was an advance allocation based on the projected

revenue anticipated to be collected. To do otherwise is to starve the Political Parties Fund and therefore the eligible Political Parties of funds which are required to enable them undertake the statutory and constitutional mandates, as stipulated in Article 91 of the Constitution.

127. The 2011 Political Parties Act was enacted post 2010 Constitution. It is one of the implementing legislation of the Constitution. To flout that law is to flout the Constitution.

128. I do not agree with the arguments felled by the 6th respondent that in such a matter, the available remedy is a constitutional interpretation for declarations since it is clear that what the applicant seeks is to compel the performance of a statutory duty in a manner stipulated in the act namely, to appropriate and allocate the funds due to the Political Parties Fund so that the administrator of the fund can disburse it in accordance with the formula set out under the Act.

129. This claim by the exparte applicant , in my humble view is well grounded as it is that of legal entitlement in order to advance political rights which are guaranteed under Article 38 of the Constitution. Those rights are enforceable under Article 22 of the Constitution. The court is given power under Article 23 of the Constitution to grant appropriate relief and in this regard, Judicial Review is one such reliefs available to the exparte applicant.

130. For all the above reasons, I find the exparte applicant's motion merited and legally sound.

131. On what orders this court should make, the exparte applicant has urged this court to grant it the Judicial Review orders of mandamus to compel the respondents to allocate, appropriate and disburse to it the sum of kshs 4,135,903,545.00 and or such other outstanding amount lawfully due to the applicant under the Political Parties Fund; such amount not being less than 40% and 95% or not less than 0.3 of the total revenue collected by the National Government during the period between 2012 and 2016 less the sum of kshs 501,575,919.00 which has been received by Orange Democratic Movement during the same period.

132. Whereas this court has found that the exparte applicant is entitled to seek for Judicial Review order of mandamus to compel the National Assembly to comply with the provisions of the Political Parties Act, namely, to allocate and appropriate not less than 0.3% of the national government revenue collected, to the Office of Registrar of Political Parties for disbursement to the qualifying political parties in accordance with the legally established procedure, and that the National treasury should in each financial year ensure that they make budgetary proposals that reflect the allocation of not less than 0.3% of the National revenue collected to be due to the Political Parties Fund, I find and hold that the applicant would in the circumstances of this case not be entitled to the orders for payment of the kshs 4,135,903,545.00 sought. The reasons are that the above sums of money were not budgeted for, allocated and or appropriated or set aside for disbursement to the exparte applicant, or even to the Political Parties Fund.

133. The sums are due in respect of the unbudgeted for, unallocated and unapropriated funds and therefore they are not available for disbursement.

134. Furthermore, the exparte applicant had all along been aware that Parliament had not been allocating and appropriating the correct amount to the Political Parties Fund since 2012 but waited until after 4 financial years that it came to court to seek for arrears.

135. Delay defeats equity. Judicial Review orders/remedies are discretionary and although the orders of mandamus is not time bound, even where the remedy is available, this court has the discretion to decline to grant it in the manner sought where it is clear like in the instant case that the applicant who is endowed with superior legal minds/advisors in this country including Senior Counsels like Hon Senator James Aggrey Orengo who are seasoned members of Parliament and esteemed members of the exparte applicant's political party, Orange Democratic Movement(ODM) could wait for 4 financial years to elapse for them to ask for payment of lump sum of over 4 billion, while knowing very well that for such sums of money to be available, it has to be allocated and appropriated by the National Assembly. The final actual figure would off course depend on the actual revenue collected.

136. It would not be in the interest of justice and public policy and it would be a paper judgment to order for payment of the arrears of the monies which money was never allocated appropriated and or disbursed to the Political Parties Fund for distribution to all eligible Political Parties using the legally established formulae.

137. It therefore follows that this order of mandamus can only apply for the future in the sense that the National Assembly be and is hereby compelled by way of mandamus to allocate and appropriate to the Political Parties Fund not less than 0.3% of the annual national revenue collected for the financial years 2018/2019 and beyond, out of which the Registrar of Political Parties shall disburse to the eligible parties 95% of the fund in accordance with the formula set out in the Political Parties Act.in this regard, the Cabinet Secretary for the National Treasury must ensure that for each financial year, the budget proposals submitted to the National Assembly must contain the statutory allocation of not less than 0.3% of the proposed anticipated revenue collected to the Political parties Fund.

138. In conclusion, I reiterate my ruling in the chamber summons for leave that political parties perform important functions without which representative democracy could not exist. They offer alternative policies from which voters chose at elections, organize campaigns to mobilize voters and field candidates for public office. Political Parties may be unpopular with technocrats but there is absolutely no better alternative way of organizing for democracy which is guaranteed by the Constitution and therefore the will of the people of Kenya.

139. Political Parties constitute engines of democratic political systems, for they encourage and enhance competition between societal groups and interests. They are in my view, the only effective mechanism by which ordinary people *'wanjiku'* can have any meaningful engagement at a personal level with the body politic.

140. Thus, representative democracy cannot function effectively without strong and healthy political parties. And democracy, it must be remembered, is one of the national values and principles of governance espoused in Article 10 of the Constitution.

141. It is for that reason that Part 3 of the Chapter seven of the Constitution of Kenya, 2010 is dedicated to political parties and under Article 92(f) thereof, Parliament is mandated to enact legislation to provide for the establishment and management of Political Parties Fund. And the National Assembly has that very important role of not only legislating and having oversight role over all other national state organs and institutions, but also the role of determining the allocation of national revenue between the levels of government, and also the appropriation of funds for expenditure by the national government and other national state organs.

142. Therefore, any question about political parties is a question of quality governance of any country that believes in democratic governance and hence the financing of political parties is a critical matter for ensuring that very much yearned for good governance.

143. Political Parties, therefore, should not be starved of that much needed revenue which accrues to them by fiat of the Constitution and its implementing legislation.

Final orders:

> ***a. Judicial Review order of mandamus be and is hereby issued compelling the National Assembly to comply with the provisions of section 24 of the Political Parties Act, namely, to allocate and appropriate not less than 0.3% of the national government revenue collected, to the Political parties Fund for administration by the Office of Registrar of Political Parties for disbursement to the qualifying political parties in accordance with the legally established formula under the Political parties Act, 2011.***
>
> ***b. The Cabinet Secretary of the National Treasury is hereby ordered to ensure that in each financial year, the National Treasury shall make budgetary proposals and estimates that reflect***

the allocation of not less than 0.3% of the National revenue collected to be due to the Political Parties Fund for appropriate administration and disbursement to the eligible political parties in accordance with the established formula under the Political parties Act, 2011.

c. This judgment and orders shall take effect from the 2018/2019 financial year.

d. The Deputy Registrar of this Court to ensure that this judgment is served upon the National Assembly, the Hon Attorney General, and the Cabinet Secretary of the National Treasury within the next ten days from the date of this judgment, and an affidavit of service filed to that effect.

e. Each party do bear their own costs of these Judicial Review proceedings as this matter was initiated in the public interest, not only for the benefit of the exparte applicant but for all other eligible political parties who did not participate in these proceedings.

Dated, signed and delivered in open court at Nairobi this 31st day of October, 2017.

R.E. ABURILI

JUDGE

In the presence of:

Mr Munene for the 1st and 2nd respondent

Miss Murimi for the 3rd respondent

N/A for the exparte applicant

N/A for the interested parties

Court Assistant: George