REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW MISC. APPLICATION NO. 78 OF 2017

IN THE MATTER OF AN APPLICATION BY THE EVANS KIDERO FOUNDATION FOR ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF AND/OR THE VIOLATION OF ARTICLES 10, 25, 43, 47, 50 OF THE CONSTITUTION, 2010

AND

IN THE MATTER OF THE NON GOVERNMENTAL ORGANIZATION'S CORDINATION ACT

AND

IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORMS ACT, CHAPTER 26, LAWS OF KENYA

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010

BETWEEN

REPUBLIC……..APPLICANT

AND

THE NON GOVERNMENTAL

ORGNIZATIONS CORDINATION BOARD……RESPONDENT

EX PARTE: THE EVANS KIDERO FOUNDATION

JUDGEMENT

Introduction

1. By a Notice of Motion dated 27th February, 2017 the *ex parte* applicant herein, **The Evans Kidero Foundation,** seeks the following orders:

> **1) An order of Certiorari do issue to move into this Court for purposes of being quashed, a decision of the Respondent communicated in a letter dated the 21st February 2017 and referenced NGOB/5/30A/8/VOL. XI.**
>
> **2) An order of Prohibition do issue to prohibit the Respondent and the State from implementing the impugned decision communicated in the letter dated the 21st February 2017 and referenced NGOB/5/30A/8/VOL. XI.**

Applicant's Case

2. According to the applicant, it is has at all times been a registered Non-Governmental Organization registered under the ***Non-Governmental Organisations Coordination Act*** (hereinafter referred to as "the Act") engaging in providing social services and support and carrying out charitable activities within the Republic of Kenya.

3. It was averred that vide a letter dated 21st February, 2017 referenced NGOB/5/30A/8/VOL. XI the Respondent communicated his decision whose effect was that the Applicant was de-registered as an NGO operating in Kenya.

4. It was the applicant's case that the Respondent in a clear demonstration of bad faith shared the alleged act of deregistration of the Applicant to the media without informing the Applicant of the decision and that the Applicant learnt of the Respondent's decision through media reports on the same. The applicant's case was that the Respondent acted in an unconstitutional manner in that the Applicant was neither accorded an opportunity to be heard nor its request for more time to respond to the allegations against it responded to. To the applicant, the process leading to the issuance of the impugned decision is illegal, procedurally unfair and violated the basic tenets of the rule of law and the principles of the Constitution and at no time was the Applicant engaged or involved.

5. The applicant therefore contended that the Respondent's act was contrary to Articles 47 and 50 of the Constitution, the ***NGO Coordination Act*** and the ***Fair Administrative Action Act*** yet the ex parte Applicant had a legitimate expectation that the Respondent would at all times be guided by the laws of the Republic in executing its mandates and would respect and uphold the principles enshrined under the Constitution and the Rule of Law.

6. The applicant disclosed that it had previously received a letter from the Respondent requesting for certain information, which correspondence they replied to through its auditors requesting for more time, but the said letter was never responded to by the Respondent. It therefore accused the Respondent of having acted unreasonably, irrationally, arbitrarily and in blatant disregard of the law.

7. In a supplementary affidavit, the applicant, that it never received the Notice allegedly issued under Form 9 dated the 6th February 2017 as the same was never served on it and averred that it became aware of the existence of the said Form 9 in the present proceedings. In addition it averred that it never received the Form 10 dated the 21st February 2017 as the same had similarly never been served on it. It was reiterated that the Applicant only learnt of the cancellation of its certificate through media reports and the said formal Notice of Cancellation has been brought to the attention of the Applicant in the present proceedings.

8. The applicant's position was that the ***NGO Coordination Act*** and Regulations are very clear on the need to serve on a party adverse Notices of intention to cancel a registration or of a cancellation of a registration and as such the failure by the Respondent to adhere to these provisions of the Act and Regulations invalidates the decisions made therein and amounts to administrative mala fides. Accordingly, it was averred that the process leading to the issuance of the impugned decision was illegal,

procedurally unfair and violated the basic tenets of the rule of law and the principles of the Constitution.

9. The applicant reiterated that the Applicant through its Counsel asked for time to file their Returns since the same were ready and was just awaiting execution by the respective officers but the Respondent in bad faith and in breach of the ***Fair Administrative Action Act*** failed to even respond to the Applicant's letter communicating that position. The applicant lamented that it is quite startling that the Respondent would expect a body corporate to act without the directions or control of its principal organ being the Board of Directors whose signatories are mandatory before returns can be filed with the Respondent.

10. The applicant insisted that it was not operating any illegal accounts, having been issued by an account opening authorization letter by the Respondent which enabled it to open and operate bank accounts in the Republic. It maintained it has never been aware of any reviews conducted upon it by the Respondent and has never been called to any meeting by the Respondent in which such a review or reviews were carried and it is an affront to the right to be heard where an administrative process may lead to an adverse recommendation on a party to fail to accord that party an opportunity to be heard or to participate in the processes leading to the adverse decision.

11. The applicant asserted that there is no law and the ***Non-Governmental Organizations Coordination Act*** and Regulations made thereunder do not bar any public officer, family members or friends from being directors of one Organization and the Respondent cannot impute illegal or improper conduct on the Applicant's officers just by virtue of the positions some of them hold in the public sector. Further the Applicant is a completely independent legal entity from the Nairobi City County and its administration and the two entities are subject to separate audit and oversight processes including the Respondent's oversight of the Applicant.

12. The applicant insisted that it has never been served with or even made aware of the existence of the alleged Notice of deregistration dated the 21st February 2017 and only learnt of the same through media reports. Its case that that the Respondent failed to accord or grant the Applicant an opportunity to respond to any allegations made against it to warrant its deregistration as required under the Constitution, the ***Fair Administrative Action Act*** and the ***NGO Co-ordination Act***.

13. It was the applicant's position that the Respondent acted unreasonably, irrationally, arbitrarily and in blatant disregard of the law and urged that the impugned decision ought to be quashed for being illegal, unreasonable and contrary to express provisions of the law and aimed at tainting and tarnishing the name and reputation of the Applicant.

Respondent's Case

14. In opposing the application the Respondent contended that it was the applicant's responsibility to have detailed knowledge of the laws governing its registration and operations and ensure strict compliance with such laws. In any case, it was contended The respondent developed terms and conditions attached to the registration certificate of all the NGOs including the applicant which terms flow from section 12(4) as read with Regulation 13 of the Act.

15. According to the Respondent Regulation 24 requires all NGOs to file annual reports every three (3) months upon expiry of its financial year and this requirement was within the knowledge of the applicant. In any event the Respondent took all reasonable care to ensure that the said requirement was encapsulated in the terms and conditions attached to the applicant's certificate.

16. It was contended that the Respondent sounded a warning which served as a reminder to the applicant to the effect that any future and further disregard of the said terms and conditions, the Act and Regulations would lead to the application of section 16(1)(a) & (b) of the Act against the ex parte applicant. That the applicant was well aware of its non-compliance and disobedience of the law was demonstrated by its response to the Respondent's notice and demand for compliance. It was further contended that the applicant's plea for more time to comply with the Respondent's demand was granted and it was upon the expiry of the said deadline that the Respondent issued a notice of cancellation of the

certificate of registration.

17. It was submitted that section 19 of the Act provides the procedure to be followed by an aggrieved person and this is by way of an appeal to the Minister for Interior and Co-ordination of National Government, within 60 days after which any further grievance can be addressed by the Court. It was therefore submitted that the filing of this application was an abuse of the court process as the jurisdiction to address the issues raised herein rests with the Respondent. Therefore, it was submitted that by ordering the applicant to approach the Respondent, the parties would get an opportunity of resolving the issues and deal with the results of the investigations.

18. Based on **Joseph Njuguna Mwaura & Others vs. Republic Criminal Appeal No. 5 of 2008** and **Alice Mweru Ngai vs. Kenya Power & Lighting Co. Ltd [2015] eKLR**, it was submitted that where the law has granted jurisdiction to other organs of Government to handle specific grievances, the Courts must respect and uphold the law.

19. It was therefore the Respondent's contention that the argument by the applicant that it was not afforded an opportunity to be heard is unsubstantiated in that it did not seek to exhaust the available mechanism under the statute that would see it being granted the same. To the Respondent a remedy by judicial review should not be made available where an alternative remedy exists and should only be made as a last resort.

20. It was submitted that section 16 as read with Regulation 17 of the Act addresses the process of deregistration and cancellation of the certificate by the Board based on breach of the terms and conditions attached to the certificate of registration and breach of the provisions of the Act. Clause 5 of the terms and conditions and Regulation 5, it as submitted addresses the need to file annual returns as a mandatory requirement which the NGOs must fulfil. In this case, it was contended that the applicant admitted that it had failed and neglected to comply with the said statutory requirement despite extension being granted to the applicant to comply.

21. It was the Respondent's case that the statutory Form 9 on the notice to show cause why their certificate of registration should not be cancelled was duly sent to the applicant's last known address as per the records held by the Board. In any case Regulation 17 provides that the issuance of the said Form does not apply with respect to the cancellation by the Board under section 16 of the Act for failure by the registered organisation to comply with regulation 24 on filing of annual returns.

22. It was therefore submitted that the allegation that the Respondent suspended the registration of the applicant without following the procedure is unfounded. With respect to the publishing of the same to the media, it was contended that the applicant was registered to confer charitable services to the public and further the Respondent being a public body owes a duty of care to the general public which it is mandated to safeguard.

23. The Respondent's case was that granting the orders sought herein would water down the Respondent's mandate and occasion a miscarriage of justice not just to the Respondent but also to the donors and members of the public who depend on such like organisations to uplift their livelihoods.

Determinations

24. Although the Respondent referred to a replying affidavit in its submissions there was no replying affidavit o record.

25. On 10th October, 2017 I directed the parties to furnish the Court with soft copies of their pleadings and submissions and only the ex parte applicant complied. Had the Respondent similarly complied, the Court would have relied on the soft copy of the said copy. However as the Respondent decided not to comply with the said directions, this Court will determine these proceedings based on the record.

26. I have considered the issues raised in this application. In my view the only issue that falls for

determination in this application is whether the rules of natural justice were breached by the Respondent in arriving at its decision.

27. The status of fair administrative action in Kenya's constitutional and jurisprudential framework was discussed by **Onguto, J** in **Kenya Human Rights Commission vs. Non-Governmental Organizations Co-Ordination Board [2016] eKLR** a case in which the powers of the same Respondent were in question, in which the learned Judge expressed himself *inter alia* as follows:

> **"As to what constitutes fair administrative action, the court in President of the Republic of South Africa and Others vs. South African Rugby Football Union and Others (CCT16/98) 2000 (1) SA 1, stated thus:**
>
> **"Although the right to just administrative action was entrenched in our Constitution in recognition of the importance of the common law governing administrative review, it is not correct to see section 33 as a mere codification of common law principles. The right to just administrative action is now entrenched as a constitutional control over the exercise of power. Principles previously established by the common law will be important though not necessarily decisive, in determining not only the scope of section 33, but also its content. The principal function of section 33 is to regulate conduct of the public administration, and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common law principles developed over decades…" [Emphasis supplied]**
>
> **Thus, a person whose interests and rights are likely to be affected by an administrative action has a reasonable expectation that they will be given a hearing before any adverse action is taken as well as reasons for the adverse administrative action as provided under Article 47 (2) of the Constitution. Generally, one expects that all the precepts of natural justices are to be observed before a decision affecting his substantive rights or interest is reached. It is however also clear that in exercising its powers to superintend bodies and tribunals with a view to ensuring that Article 47 is promoted the court is not limited to the traditional judicial review grounds. The Fair Administrative Action Act, 2015 must be viewed in that light.**
>
> **The Petitioner also alleges violation of its right to fair hearing. Article 50(1) of the Constitution makes provision for fair hearing. The Article is to the effect that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.**
>
> **The right to fair hearing is evidently closely intertwined with fair administrative action .The oft cited case of Ridge vs. Baldwin [1964] AC 40 restated the right to fair hearing as a rule of universal application in the case of administrative acts or decisions affecting rights. In his speech to the House of Lords in 1911, Lord Loreburn aptly put is as a 'duty lying upon everyone who decides anything' that may adversely affect legal rights.**
>
> **Halsbury Laws of England, 5th Edition 2010 Vol. 61 at para 639 on the right to be heard states that:**
>
> **"The rule that no person is to be condemned unless that person has been given prior notice of the allegations against him and a fair opportunity to be heard (the audi alteram partem rule) is a fundamental principle of justice. This rule has been refined and adapted to govern the proceedings of bodies other than judicial tribunals; and a duty to act in conformity with the rule has been imposed by the common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court."**
>
> **I would state that it now appears that the court, effectively has a duty to look into not only the**

merits and legality of the decision made due to the requirement of "reasonable" action under Article 47, but also the process and procedure adopted due to the requirement of following all precepts of natural justice under both Articles 47 and 50(1) of the Constitution. The court proceeding under Article 47 of the Constitution is expected not only to pore over the process but also ensure that in substance there is justice to the petitioner. The traditional common law principles of judicial review are, in other words, not the only decisive factor.

It may sound like stretching the precincts of traditional judicial review, but clearly by the Constitution providing for a "reasonable" administrative action and also enjoining decision makers to provide reasons, the constitutional scheme was to entrench the blazing trend where courts were already going into merits of decisions by innovatively applying such principles like proportionality and legitimate expectation. I must however confess that the line appears pretty thin and, perhaps, more discourse is required on the subject of traditional judicial review and the now entrenched substantive constitutional judicial review."

28. The Article that specifically deals with judicial review of administrative action Article 47 of the Constitution. Pursuant to the said Article, Parliament enacted the ***Fair Administrative Action Act, 2015***. Section 2 thereof defines "administrative action" to include:

(i) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

(ii) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;

29. The same section defines 'administrator" as "a person who takes administrative action or who makes an administrative decision." Section 3 on the other hand provides:

(1) This Act applies to all state and non-state agencies, including any person

(a) exercising administrative authority;

(b) performing a judicial or quasi-judicial function under the Constitution or any written law; or

(c) whose action, omission or decision affects the legal rights or interests of any person to whom such action, omission or decision relates

30. It is therefore clear that the Respondent was performing an administrative action and was in terms of the foregoing an administrator. It is therefore my view and I so hold that pursuant to the provisions of Article 47 as read with the provisions of the ***Fair Administrative Action Act, 2015***, judicial review orders may where appropriate issue against the decisions of the Respondent .

31. Article 47 of the Constitution provides that:

(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.

32. The said Article was the subject of the Court of Appeal pronouncement in **Judicial Service Commission vs. Mbalu Mutava & Another [2015] eKLR,** Civil Appeal 52 of 2014 it held that:

"Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national

values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed."

33. Article 47 has now been effectuated by the ***Fair Administrative Action Act, 2015*** under which section 4(3) provides as follows:

(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.

34. In interpreting the said provisions I associate myself with the position adopted by **Kasanga Mulwa, J** in **Republic vs. Registrar of Companies *ex parte* Githungo [2001] KLR 299,** where he held that natural justice requires that persons who might be affected by administrative acts, decisions or proceedings be given adequate notice of what is proposed. In **Egal Mohamed Osman vs. Inspector General of Police & 3 Others [2015] eKLR** at page 7 the Court at the time referred to **The Management of Committee of Makondo Primary School and Another vs. Uganda National Examination Board, HC Civil Misc Application No.18 of 2010**, in which the Ugandan Supreme Court stated as follows regarding the rules of natural justice:

"It is a cardinal rule of natural justice that no one should be condemned unheard. Natural justice is not a creature of humankind. It was ordained by the divine hand of the Lord God hence the rules enjoy superiority over all laws made by humankind and that any law that contravenes or offends against any of the rules of natural justice, is null and void and of no effect. The rule as captured in the Latin Phrase 'audi alteram partem' literally translates into 'hear the parties in turn', and has been appropriately paraphrased as 'do not condemn anyone unheard'. This means a person against whom there is a complaint must be given a just and fair hearing."

35. In my view the restriction on the right to be heard is an exception rather than the rule. Since the principles of the right to be heard are geared towards the realisation of fair administrative action, which is a fundamental right captured in Article 47 of the Constitution, I associate myself with the position in **Republic vs. the Honourable the Chief Justice of Kenya & Others Ex Parte Justice Moijo Mataiya Ole Keiwua Nairobi HCMCA No. 1298 of 2004** in which the Court held that:

"The right to be heard has two facts, intrinsic and instrumental. The intrinsic value of that right consists in the opportunity which it gives to the individuals or groups, against whom decisions taken by public authorities operate, to participate in the proceedings by which those decisions are made, an opportunity to express their dignity as persons. The ordinary rule

which regulates all procedures is that persons who are likely to be affected by the proposed/likely action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it and such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence."

36. That was the position in the case of **Chief Constable Pietermaritzburg vs. shim 1908 29 NLR 338 341** where the court held that "it is a principle of common law that no man shall be condemned unheard, and it would require very clear words in the statute to deprive a man of that right."

37. Therefore by taking an action which clearly adversely affected the interests of the applicant the Respondent was duty bound to ensure that in the process of arriving at its decision, the rules of fairness were adhered to. Otherwise such a decision would be tainted with illegality and procedural impropriety. Section 16(2) of the Act reinforces this principle by providing that:

Notice of the cancellation of a certificate shall be served on the Organisation in respect of whom such cancellation relates and shall take effect within fourteen days after the date of that notice.

38. It is clear that this section does not give any exceptions. Therefore the Respondent cannot fall back on Regulation 17(A) which is a subsidiary legislation in order to restrict the requirements of section 16(2) aforesaid. In this case the applicant contends that it was never served with a notice of cancellation before the decision was made. There is no evidence that such notice was issued to it.

39. Whereas, the decision may well be justified on merits, once it is found to violate the rules of natural justice it cannot be permitted to stand. This was the position in **Onyango Oloo vs. Attorney General [1986-1989] EA 456** where the Court of Appeal expressed itself as follows:

"The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard...There is a presumption in the interpretation of statutes that rules of natural justice will apply and therefore the authority is required to act fairly and so to apply the principle of natural justice...*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*." [Emphasis mine].

40. This was a restatement of Lord Wright's decision in **General Medical Council vs. Spackman [1943] 2 All ER 337** cited with approval in **R vs. Vice Chancellor JKUAT Misc. Appl. No. 30 of 2007** that:

> **"If the principles of natural justice are violated in respect of any decision, it is, indeed immaterial whether the same decision would have been arrived at in the absence of the departure from essential principles of justice. The decision must be declared as no decision."**

41. In **Ridge vs. Baldwin [1963] 2 All ER 66** at 81, **Lord Reid** expressed himself as follows:

> **"Time and again in the cases I have cited it has been stated that a decision given without the principles of natural justice is void."**

42. As the Respondent and the 1st interested party clearly had no power to act in the manner they did, their action amount to nought. In **Liverside vs. Anderson [1942] AC 206 at 244**, **Lord Atkin** had this to say:

> **"In this country, amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachment on his liberty by the executive, alert to see that any coercive action is justified in law."**

43. I fully associate myself with the position adopted by the Court of Appeal in **Law Society of Kenya vs. Centre for Human Rights and Democracy & 13 Others [2013] eKLR** that:

> **"If it is proved that the tribunal, person or authority has deviated from the established and set beacons or pathway or legal criteria as delineated and demarcated for it and has run wild and amok, and at worst has gone on a frolic of its own, become an unruly horse and engaged in caprice, malice, witch-hunting and a wild goose chase running helter- skelter, it is the duty of the High Court through its supervisory jurisdiction to pull the leash and firmly point the delineated legal path that the tribunal, person or authority is enjoined by law to tread and to follow.**
>
> **The supervisory jurisdiction of the High Court is the leash and bridle that affirm and ensures that all tribunals, persons or authority are subject to the Constitution, rule of law, natural justice and good governance. It ensures that there is no trampling and aberration of the fundamental rights of the citizen. The supervisory jurisdiction is an in-built internal check and balance within the judicial system. It is the king pin upon which the cog and wheels of justice revolve and without it, untrammelled exercise of discretion reigns supreme – this is not what the people of Kenya intended when they promulgated the 2010 Constitution. The people of Kenya intended to have a country governed by the Constitution and the rule of law, not an unchecked exercise of judicial and quasi-judicial power by any person or authority."**

44. Accordingly, if it is proved that in purporting to exercise the powers donated to him by law a public officer has ignored the legal requirements with impunity or has exceeded the legal parameters and criteria set out for the exercise of his jurisdiction, the leash of the supervisory jurisdiction of the High Court must be activated, invoked and unleashed.

45. The expressions of this Court in **International Centre for Policy and Conflict vs. Attorney General & Others Nbi Misc. Civil Cause No. 226 of 2013**, bears repetition. There, the Court pronounced itself as follows:

> **"Courts are the temples of justice and the last frontier of the rule of law and must therefore remain steadfast in defending the letter and the spirit of the Constitution no matter what other people may feel. To do otherwise would be to nurture the tumour of impunity and**

lawlessness. That tumour like an Octopus unless checked is likely to continue stretching its eight tentacles here and there grasping powers not constitutionally spared for it to the detriment of the people of this nation hence must be nipped in the bud."

46. This Court has noted in the past that the Respondent herein seems to be running amok without caring whether its actions are backed by law or not and whether the same are procedurally fair or not. By so acting the Respondent is subjecting the tax-payer to incurring expenses in form of costs which would otherwise have been avoided if the Respondent carried out its duties competently and responsibly. Under Article 201(d) of the Constitution one of the principles that guide all aspects of public finance is that public money shall be used in a prudent and responsible way. To subject the taxpayer to incur costs which could have been avoided by simply reading the law or to do so in order to achieve some collateral purposes cannot possibly be termed as prudent and responsible use of public money. Article 232(1)(b) of the Constitution on the other hand provides that values and principles of public service include efficient, effective and economic use of resources. It is my view that a public officer who does not adhere to these principles ought to be personally held responsible for the same. Therefore where a public officer by his or her action or inaction imprudently subjects the public to incur expenses which upon exercise of due diligence would have otherwise been avoided, he or she should be made to pay for the same. This Court will therefore in future not hesitate to call upon such officers to show cause why the costs of any ill advised litigation occasioned by their negligence, recklessness or improper motives cannot be personally borne by the said officers.

47. I have said enough to show that the Notice of Motion dated 27th February, 2017 is merited.

Orders

48. In the result 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 a decision of the Respondent communicated in a letter dated the 21st February 2017 and referenced NGOB/5/30A/8/VOL. XI which decision is hereby quashed.

2. An order of Prohibition prohibiting the Respondent and the State from implementing the impugned decision communicated in the letter dated the 21st February 2017 and referenced NGOB/5/30A/8/VOL. XI.

3. The costs of this application are awarded to the applicant and the same shall be borne by the Respondent.

49. Orders accordingly.

Dated at Nairobi this 17th day of November, 2017

G V ODUNGA

JUDGE

Delivered in the presence of:

Mrs Ahomo for Mr Otieno for the ex parte applicant

CA Ooko