



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA

Petition No. 2 Of 2014

1. COUNTY GOVERNMENT OF BUSIA

2. THE GOVERNOR BUSIA COUNTY.....APPLICANTS

VERSUS

1. JULIUS ORINA MANWARI

2. ANJELINE MORAA AMUKOYE

3. JOHN OTIENGI

4. ROTALINK ENGINEERS

5. WASERA JOSEPH

6. PETER GABRIEL AKILEO

7. DAVID ASHIOYA

8. BENARD ODIPO

9. NESON KHOBERO

10. MAHADI INVESTMENT

11. STOPHICA MUTACHI BARASA

12. JAMES KURIA WAIRIUMU.....RESPONDENTS

AND

THE ATTORNEY GENERAL OF THE

REPUBLIC OF KENYA.....INTERESTED PARTY

JUDGMENT

PLEADINGS AND BACKGROUND

1. Once again, the Constitutional and Legal Provisions in relation to the Transition to Devolved

Government have been brought to focus. In this Petition the Petitioner seeks the following remedies:-

1) A declaration that all pending executions against any of the Petitioners herein individually and or jointly and particularly those arising out of claims filed against the former Local Authorities of Nambale Town Council, Busia County Council, Teso County Council, Busia Municipal Council, Port Victoria town Council, Malaba Town Council and Bumala Town Council are stayed forthwith, suspended and or declared null and void.

2) A declaration that the enjoinder of the Petitioners herein individually and or jointly in pending suits arising out of claims filed against the former Local Authorities of Nambale Town Council, Busia County Council, Teso County Council, Busia Municipal Council, Port Victoria Town Council, Malaba Town Council and Bumala Town Council the former Local Authorities is malicious and thus null and void.

3) An order directing the Respondents to re-direct/launch their claims through the "Authority" as defined under section 2 of the Transition to the Devolved Government Act Cap 265A Laws of Kenya and not through the Petitioners.

4) Any other order the Honourable court may deem it be fit and just to ensure that law and order is maintained.

2. The 2nd Petitioner is the County Government of Busia as duly constituted under the Provisions of the Constitution of Kenya 2010 and the County Governments Act Chapter 265 (Laws of Kenya). The common thread that joins the twelve (12) Respondents is that they are claimants in court cases, at various stages, against the now defunct Local Authorities of Nambale Town Council, Busia Town Council, Teso County Council, Busia Municipal Council, Port Victoria Town Council, Malaba Town Council and Bumala Town Council.

3. The grievance of the Petitioners is that the Respondents are seeking to enjoin the 1st Petitioner into the various suits against the defunct Local Authorities. The position of the Petitioners is that the proposed enjoinder is premature and a contravention of the Constitution and Statute. It is the averment of the Petitioner that by virtue of the Constitution of Kenya 2010, The County Governments Act and The County Governments Public Finance Management Transition Act the budget making process, Approval and Requisite Appropriation and Legislative processes are functions of The County Assembly. Secondly, that the County Government of Busia is independent and autonomous of the National Government which was the Principal to the defunct Local Authorities.

4. In addition, the Petitioners are of the view that it would be premature to enjoin the 1st Petitioner to the suits before the process of verification and transfer of assets and liabilities from the defunct Local Authorities to the National and County Governments that is contemplated by the Transition to Devolved Government Act is complete. In this decision The County Governments Act, The County Governments Public Finance Management Transition Act and the Transition to Devolved Governments Act shall jointly be referred to as the Devolution Statutes.

5. The Respondents are opposed to the Petition. The 1st Respondents reply is dated 18th March 2015. The 1st Respondent states that the entire Petition is a misconstruction of both the Constitution and Statute. The 1st Respondent argues that the Constitution and Devolution Statutes as relates to County Governments were intended to establish mechanisms and facilitate settlement of any existing obligations of the defunct Local Authorities to their creditors. That the intention of the Constitution and of the Statutes could not have been to obstruct the settlement of those obligations. In making those arguments the 1st Respondent cited Article 159 2(b) and (d) of the Constitution which provides:-

2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles-

a).....

b) Justice shall not be delayed;

c).....

d) Justice shall be administered without undue regards to procedural technicalities; and

6. In addition This Court was asked to give regard to section 33 of the Sixth Schedule of the Constitution,

“An office or institution established under this Constitution is the legal successor of the corresponding office or institution, established under the former Constitution or by an Act of Parliament in force immediately before the effective date, whether known by the same or a new name.”

That on proper construction of the provision, the County Government of Busia was the Legal Successor of the named Defunct Authorities.

7. The other Respondents took a similar position and in addition opposed the Petition on the ground that it does not raise any Constitutional issues. They took the position that the Petitioners should have sought the orders they seek here in the parent files in which the Petitioners seek to be enjoined.

THE SUBMISSIONS

8. The Petitioners invited the court to find that section 15 of the 6th Schedule and Section 2 of the Transition to Devolved Government Act were relevant to the resolution of the matter at hand. It was emphasized for the Petitioners that the process of identifying the assets and liabilities of County Governments is ongoing and should be completed within three years of the date of the first election under The Constitution 2010. That the date for completion of that exercise is therefore 4th March 2016.

9. Secondly, the Petitioners submitted that payments for whatever claims arising from the defunct Local Authorities must be effected within the context of the Public Finance Management Transition Act. The debt must be known and the amount must be ascertained and then included in the Budgetary Estimates and the Finance Bill of the County. It was also argued that the 2nd Petitioner has no role whatsoever in Finances at the County level as that is the mandate of the County Assembly.

10. In reply, the Respondents argued that on reading Section 33 of the 6th Schedule to the Constitution, the Legal Successor to the former Local Authorities was the Busia County Government. That the provisions of Section 33 are reinforced by the provisions of Section 23 (3) (e) of the Interpretation and General Provisions Act Cap 2 Laws of Kenya which provides;

Where a written law repeals in whole or in part another written law, then, unless a contrary intention appears the repeal shall not –

e) affect an investigation, legal proceedings or remedy in respect of a right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment maybe be imposed, as if the repealing written law had not been made.

11. The Respondents submitted that Parliament could not have intended that there be a vacuum in settlement of debts from the Local Authorities. That the spirit of the Devolution Statutes is that there shall be a continuation of a relationship between the County Government and the creditors of the defunct local authorities. The Respondents relied on two recent High Court decisions being **Bungoma Misc Application No. 10 of 2014 Abdi Ali Sheikh vs The County Secretary County Government of**

Kakamega (unreported) and **J.A.S. Kumenda & Another vs Clerk Municipal Council of Kisii and 6 others (2013) eKLR.**

12. It was further emphasized that the Judgments and Decrees are not under challenge and there was nothing to be identified or verified and that the County Government of Busia should abide by the recommendation of the Transition Authority on settlement of Decrees against defunct Local Authorities. Counsel was referring to a manual prepared and circulated by Transition Authority to all County Government titled **“Mechanisms and Criteria of Transfer of Assets and Liabilities of Government and Other Public Entities”**. Recommendation 6 under Article 7.7 of the document reads as follows:-

“On transfer of cases, it is recommended that a functional approach be adopted, for those cases which are unlikely to be settled within the period of transition. The cases can be categorized to fit within the provision of the fourth schedule and then transferred to the respective Government. There should be vetting of all the cases by the defunct Local Authorities to determine:

i) Cases where judgment have been delivered

a) If the judgment is for or against the defunct Local Authorities, parties should be made to comply with the law and honour the award.”

THE DETERMINATION

13. So as to deserve a determination on merit, the Petition must, first, overcome the criticism that it is an abuse of court process. The opening ground of opposition filed by the 2nd, 3rd, 4th, 6th 9th and 11th Respondents raises the following issue:-

“That the petition is bereft of any constitutional issues, and that it was a misplaced, and mischievous recourse to obtain orders of stay in the High court, in a separate file, form the parent files that gave rise to the orders, judgments, rulings and awards, that are now being sought to be stayed.”

In my understanding, the Respondents are raising a fundamental issue that the answer to the Petitioners apprehension is a relief in the separate civil proceedings in which they are sought to be enjoined. The Respondents are making reference to the existence of a parallel remedy. As a corollary, the Respondents do not see any Constitutional issues that deserve a determination through a Constitutional Petition.

14. Before I decide on this objection by the Respondents, I must observe that, as drawn, the nature and character of the Petition does not reveal itself readily. Are these proceedings for Enforcement of the Petitioners Bill of rights? Perhaps not, because in none of the 45 paragraphs of the Petition do the Petitioners complain of or cite any Right or Fundamental Freedom that is denied, violated, infringed or threatened.

15. In the title to the Petition, the Petitioners seem to suggest that they are seeking an Advisory opinion of this court pursuant to Article 165 (3) (d) of the Constitution of Kenya, 2010. That Article provides:-

Subject to clause (5), the High Court shall have-

(d) Jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of-

i) The question whether any law is inconsistent with or in contravention with this Constitution;

ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;

iii) Any matter relating to Constitutional powers of state organs in respect of County Governments and any matter relating to the Constitutional relationship between the levels of government; and

iv) A question relating to conflict of laws under Article 191; and

In Constitutional proceedings, the High Court determines disputes before it and where merited grants appropriate reliefs which may include Declaration of rights, orders for Judicial Review or Damages. The High Court does not render Advisory Opinion. That said, and to be fair, to the Petitioners, they sought certain very specific Declarations at the end of the Petition.

16. The difficulties of the nature and character of the Petition aside, I must return to the Respondents argument. The Petitioners did not tell court that they could not, using the same reasons cited in this Petition, resist their enjoinder to various civil proceedings. The arguments made by the Petitioners are substantially on the interpretation of the Devolution Statutes. A party that is sought to be wrongly enjoined to civil proceedings can raise an objection to the enjoiner. Where enjoiner has been ordered a party can seek, by application, to be removed from misjoinder. This happens routinely before our civil courts and this was a course that was open to the Petitioners. And nothing changes merely because the Applicant has to rely, in addition to provisions of legislation, on some Constitutional provisions to argue his/her position. Courts at all levels are often, and as a run of the mill called upon to interpret the provisions of the Constitution and Statutes in resolving Civil Disputes or Criminal cases before them.

17. This court is swayed by the Respondents argument that there is an alternative remedy to the Petitioners cause. And as a general rule where a parallel remedy exists, then that remedy, and not a Constitutional relief, should be sought unless that remedy does not provide adequate relief. It would otherwise amount to an abuse of court process. The decision **in C.A. No. 84 Damian Belfonte – vs- The Attorney General of Trinidad and Tobago** sets out the approach to be taken in examining whether the invocation of a Constitutional relief, where a parallel remedy exists, amounts to an abuse of Court. The court Held;

“(19) the opinion in Jaroo has recently been considered and clarified by the Board in AG V Ramanoop. Their lordships laid stress on the need to examine the purpose for which the application is made in order to determine whether it is an abuse of process where there is an available common law remedy. In their lordship’s words:

“.....Where there is a parallel remedy, constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course *As a general rule, there must be some feature, which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court’s process. A typical, but by no means exclusive, example of such a feature would be a case where there has been an arbitrary use of state power* “ (emphasis added).”

Do the issues raised by Petitioners herein reveal a feature or features that makes a Constitutional relief rather than the ordinary one more appropriate? None was cited to me and on my own I cannot see any. However, it may be of concern that the Petitioners may be required to make a myriad of applications in the various civil suits and this may not be an efficient way of disposing of a common issue or issues. But that may turn out to be a misplaced concern because the civil process itself contemplates this type of situation and provides procedure for test cases.

18. It is my finding that an adequate relief to the Petitioners apprehension lies with them challenging their enjoinder in the various Civil Proceedings. I therefore hold that this Constitutional Petition is an abuse of court process. And with that I would have ordinarily come to the end my decision. I however feel constrained to make some observations on the position taken by the Respondents that, as a matter of course, a County Government takes up the liabilities of the defunct Local Authorities that were located within their jurisdiction.

19. The Respondents find support for this argument in various High Court Decisions. For instance **Okong'o J in J.A.S. Kumenda & Another vs Clerk Municipal Council of Kisii & 6 Others (2013) eKLR** held as follows-

“Due to the foregoing, the County Governments are in my view the successors of the local authorities that were constituted under the repealed Local Government Act and should be the ones to proceed with pending legal actions by the defunct local authorities and against whom the pending legal proceedings against the said local authorities should be sustained. I find support in this proposition in the Sixth Schedule to the Constitution of Kenya.

Section 33 of the Sixth Schedule to the Constitution of Kenya, 2010 provides that, an office or institution established under the constitution of Kenya, 2010 is a legal successor of the corresponding office or institution under the former Constitution or under a former Act of parliament in force immediately before the effective date of the Constitution of Kenya, 2010 whether known by the same name or a new name. County Governments under the new constitution took over the powers and functions of the local authorities as they were recognized and defined under the old constitution and the Local Government Act. Pursuant to the provisions of the said Section 33 of the Sixth Schedule to the Constitution of Kenya, 2010 County Governments are therefore the natural and presumptive legal successors of the defunct local authorities. It follows therefore that until the body referred to in Section 59 of Urban Areas and Cities Act is established, legal actions that were pending by and against the defunct local authorities can be sustained or pursued against County Governments under whose jurisdiction such local authorities were situated. To hold as argued by the Respondents herein that such legal proceedings should remain suspended until such a time that the said body is set up would result in an absurd and a manifestly unjust situation for the hundreds of litigants who have pending suits against the defunct local authorities. Such holding would also put courts in very awkward position as they would not know what to do with matters involving the defunct local authorities which are pending rulings and judgments before them”

20. Reaching a similar conclusion in **Republic vs Town Clerk of Webuye County Council and Another (2014) eKLR Majanja J** was of the following view:

“Despite the statutory lacuna’s in the County Government Act and the Urban Areas and Cities Act, the rights accrued as a result of the litigation are preserved upon repeal of the Local Government Act by the Constitution. Section 33 of the Sixth Schedule to the Constitution provides for succession of institutions upon promulgation. It states that, “*An office or institution established under this Constitution is the legal successor of the corresponding office or institution, established under the former Constitution or by an Act of parliament in force immediately before the effective date, whether known by the same or a new name.*”

In my view an taking into account the legal provisions I have cited, the County is the legally established body unit contemplated under the law that takes the place of local authorities unless there is a contrary enactment. I therefore find and hold that the proceedings and judgment against Webuye Town Council and its officers must continue against Bungoma County which must now bear the burden of the judgment.”

21. While Mabeya J, added this angle to the argument in **High Court Bungoma Misc Application No. 10 of 2014;**

“The Respondents contended that the liability of the Lugari County Council did not as a matter of course fall on the Respondent. That the Transition Authority is yet to specify which of the assets and liabilities of the Lugari County Council is to be taken by the Central government and which one will remain with the Respondent. In my view, Articles 48 and 159(2)(b) behoves this court to ensure that justice is attained without undue delay. It was not in contemplation of the drafters of our Constitution as well as the Transition into Devolved

Government Act, that settlement of claims, more so, decrees against the defunct local authorities would be suspended indefinitely. If that was the intention, nothing would have been easier than to expressly provide so. To my mind, Section 35 of the Transition to Devolved Government act which the Respondent relied on, do not amount to a suspension of settlement of claims by the devolved units, it only bars such units from transferring assets and liabilities to 3rd parties so that no devolved units short changes the Central Government on the shared assets or liabilities which the decree in Bungoma CMCC No. 366 of 2005 is not.”

22. The Transition to Devolved Government Act is the Statute that provides a framework for the transition to Devolved Government and was enacted pursuant to Section 15 of the Sixth Schedule to the Constitution. The drafters of the Constitution contemplated that the Transition to Devolved Government would be phased and instructed that Parliament shall, by Legislation, make provision for the phased transfers from the National Government to County Government of functions assigned to them under Article 185.

23. The object and purpose of the Transition to Devolved Government Act is outlined in Section 3 of the Act. Its object and purpose is to:-

(a) Provide a legal and institutional framework for a co-ordinated transition to the devolved system of government while ensuring continued delivery of services to citizens;

(b) Provide, pursuant to section 15 of the Sixth Schedule to the Constitution, for the transfer of powers and functions to the national and county governments;

(c) Provide mechanisms to ensure that the Commission for the implementation of the Constitution performs its role in monitoring and overseeing the effective implementation of the devolved system of government effectively;

(d) Provide for policy and operational mechanisms during the transition period for audit, verification and transfer to the national and county governments of-

i) assets and liabilities;

ii) human resources;

iii) pension and other staff benefits of employees of the government and local authorities; and

iv) any other connected matters;

(e) provide for closure and transfer of public records;

and

(f) provide for the mechanism for capacity building requirements of the national government and the county governments and make proposals for the gaps to be addressed.

24. Under the provisions of the Act, The Transition Authority is mandated with the function of preparing and validating an inventory of all the existing assets and liabilities of Government, other Public entities and Local Authorities. The Act, just like the Constitution, provides for a phased transition. In the interpretation section of the Act, two phases are provided and defined. Phase one is:-

“...The period between Commencement of the Act and the date of the first election under the Constitution.”

While phase two means;

“...The period between the date of the first election and three years after the first elections under the Constitution”

25. The 4th Schedule to the Act provides the activities to be undertaken in the two phases. It is important to reproduce the provisions of the entire schedule which is titled “Transition Phases”

1. During phase one of the transition period, the Authority shall carry out the following activities-

a) audit assets and liabilities of the government, to establish the asset, debts and liabilities of the government;

b) audit assets and liabilities of local authorities, to establish the asset, debts and liabilities of each Local Authority;

c) audit local authority infrastructure in the counties, to establish the number and functionality of plant and equipment in Local Authorities;

d) audit the government infrastructure in the counties, to establish the number and functionality of plant and equipment for the purpose of vesting them to either level of government;

e) audit the government staff in counties, to establish the number of staff in each county by cadre, grades, gender, age and qualification;

f) audit the Local Authority staff in the counties, to establish the number of local authority staff in each county by cadre grades, gender, age and qualification;

g) facilitate civic education, to ensure civic education on devolution is commenced and co-ordinated;

h) facilitate the initial preparation of county budgets, to ensure such budgets are agreed upon;

i) facilitate the preparation of county profiles, to ensure that the profiles of counties are produced, published and publicized;

j) carry out an analysis of functions and competency assignment and ensure plan for distribution of functions and competency is published and necessary Acts amended;

k) provide mechanism for closure and transfer of public records and information;

l) facilitate the development of county public finance management system;

m) provide a mechanism for the transition of government and local authority employees;

n) provide for a mechanism for the transfer of government net assets and liabilities to national and county governments;

o) provide mechanisms for the transfer of assets and liabilities which may include vetting the transfer of assets during the transitional period;

p) provide for a mechanism that will secure assets and liabilities held by the Local Authorities; and

q) any other activity that may be necessary to carry out its functions.

Phase two

1. During phase two of the transition period the Authority shall carry out the following activities –

- i. complete any activity that may be outstanding from Phase One;**
- ii. oversee the transfer of functions from the national government to the county government;**
- iii. facilitate the county governments in the performance of their functions;**
- iv. any other activity that maybe necessary to enable county governments carry out their functions.**

26. To my mind, court cases for or against the defunct local authorities will either be assets and liabilities. What then would the transfer of the court cases entail? Both sides to these proceedings made reference to a manual prepared by the Transition Authority Titled “Mechanism and criteria for Transfer of Assets and Liabilities of Government and other Public Entities.” That manual has useful insights of the criteria for transfer of the court cases. Parts 7.3 and 7.4 of The Manual provides as follows:

7.3 Mechanism for transfer of Court Cases involving the Defunct Local Authorities

The mechanism for the transfer of cases involving the defunct local authorities shall follow the procedure and provisions provided under the constitution.

The Constitution of Kenya in Article 187(2)(a) provides that resources shall follow functions. Once functions are transferred to the County Governments for instance, it is expected that the assets and liabilities accompanying those functions shall accompany the transferred function. Some of the liabilities that follow the assets are the cases that were initiated for or against the defunct Local Authorities. It will be right to argue that the cases will follow the assets as they follow the function transferred either to the National Government or the County Government. In order to determine the mechanism for the transfer of cases involving the defunct Local Authorities, it is imperative to first determine the nature of the cases involving the defunct Local Authorities. The reports cases include but are not limited to:

- 1. Personal injury claims**
- 2. Employment and Labour Relation issues**
- 3. Cancellation and denial of trade Licences.**
- 4. Breach of Contractual Obligations**
- 5. Land matters**
- 6. Non- Remittance of Statutory Deductions.**

7.4 Manner of Handling Court Cases involving Defunct Local Authorities

Section 134 of the County Government Act No. 17 of 2012 provides that:

1) The Local Government Act is repealed upon the final announcement of all the results of the first elections held under the Constitution.

2) All issues that may arise as a consequence of the repeal under Subsection (1) shall be dealt with and discharged by the body responsible for Matter relating to transition.

3) Transfer of court cases involving the defunct Local Authorities, need to follow the principle that the functions against which the case has been premised, must also be devolved so as to ascertain what cases belong to what function and which organ is the duty bearer for that function.

The argument by the Respondents is that a case for or against a defunct Local Authority follows the County Government which has the jurisdiction over the area in which the Local Authority was located. It is an argument that as a matter of course a County Government takes up the liabilities of the defunct Local Authorities that were located within its jurisdiction. Some reliance was placed on section 33 of the Sixth Schedule to the Constitution which states as follows:

“An office or institution established under this Constitution is the legal successor of the corresponding office or institution, established under the former Constitution or by an Act of Parliament in force immediately before the effective date, whether known by the same or a new name.”

27. I am not certain that this saving provision should apply to matters of succession and transition specifically covered by another part of the Constitution. Section 15(1) of the Sixth Schedule required that legislation be enacted to make provision for the transfer of devolved functions from the National Government to County Governments. The legislation enacted (The Transition to Devolved Government Act) provides the legal and constitutional framework for the Transfer of Assets and Liabilities to the devolved units. On my reading of the Constitution as an integral whole, I favour the view that the provisions of Section 33 of the Sixth Schedule should not be interpreted in a manner that diminishes the purpose and object of section 15 of the Sixth Schedule.

28. I do not think that it is in the place of the Court to find that all proceedings against the named defunct local authorities must naturally continue against the County Government of Busia because there is a Statutory Authority, being the Transition Authority, that has the constitutional mandate to carry out the function of identifying who should assume that responsibility. It is expected that the Authority has the expertise and resources to discharge its constitutional function. That Authority, from the manual referred to above, has identified that a criteria for transfer of court cases involving defunct local authorities needs to follow the principle that “the assets and liabilities accompanying function shall accompany the transferred function”.

29. It is agreed by both sides that the Authority has not completed the activity of auditing and verifying the court cases for purposes of transfer. This is one of the activities that ought to have been carried out in phase one of the transition period (see the provisions of The Fourth Schedule to The Transition to Devolved Government set out in paragraph 25 of this Decision). However, the same requirement provides that any activity that may be outstanding from Phase one shall be completed in Phase two of the transition period. Phase two means the period between the date for the first elections and three years after the first elections under the Constitution. The date of the first election was 4th March 2013 and that would mean that Phase two ends on 4th March 2016. The period granted to the Authority by law is yet to expire.

30. There is yet the argument by the Respondents that it could never have been the intention of the Constitution that settlement of claims against defunct Authorities be delayed indefinitely. But Devolution involved the replacement of one system of Government with another. The drafters of the Constitution, in section 15 of The Sixth Schedule of the Constitution, provided for a Phased transition. This Court is not told that the phases for transition set out in the Transition to Devolved Government Act is against the spirit of the Constitution or are in any way unconstitutional. There could be hardship and inconvenience during the period of transition but through Constitutional and Statutory provisions, The People of Kenya agreed that a period of not more than 3 years from the date of the first election under the Constitution was required for an orderly and coordinated transition to the Devolved System of Government. The Respondents would in my view have to live with this negotiated hardship and inconvenience, might it not be for greater good? In the end I agree with position taken by Ngaah J in **Republic vs County Secretary Murang'a County Government ex-parte Thiga Thuita [2014] eKLR**. In holding that it was erroneous

to substitute the County Secretary of the County Government of Murang'a for The Town Clerk, Municipal Council of Murang'a for purposes of compelling the former to settle costs against the defunct Municipal Council of Murang'a, the Judge stated:-

The closest law that appears to address the devolution of assets and the assumption of liabilities of the local authorities prior to their extinction is the Transition of Devolved Government Act, Chapter 265A, of the Laws of Kenya. With the emergence of the County Governments, the assets and pre-existing liabilities of the now defunct local authorities were to be shared between those county governments and the national government. The body that was established to work out how this distribution was to be done was the Transition Authority which is created under section 4 of the Transition to Devolved Government Act. Among its functions set out in Section 7 of the Act, the Transition Authority is required to prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities. Once this is done it is upon the Transition Authority to come up with the criteria to determine the transfer of previously shared assets, liabilities of the government and local authorities. As at the time this application was argued, there was no evidence and none was brought to the attention of the court that such a criteria is now in place as contemplated under the Transition to Devolved Government Act. Without this criteria, it would be premature to attribute the local authorities' pre-existing liabilities to the County Governments.

It follows that even if the applicant's motion was properly before court, there would still be no basis to hold the county government of Murang'a responsible for liabilities which were hitherto attributed to the Municipal Council of Murang'a.

31. But for reasons stated earlier I dismiss the entire Petition with costs.

DATED, SIGNED AND DELIVERED AT BUSIA THIS 29th DAY OF MAY 2015.

F. TUIYOTT

J U D G E

IN THE PRESENCE OF:

OILE.....COURT CLERK

ETYANG & MAKOKHA.....FOR THE PETITIONERS

MANWARI.....FOR THE 1ST RESPONDENT

MANWARI H/B FOR ASHIOYAFOR THE OTHER RESPONDENTS