REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

IN THE CONSTITUTIONAL AND JUDICIAL REVIEW DIVISION

MISCELLANEOUS CIVIL APPLICATION NUMBER 313 OF 2012

IN THE MATTER OF: AN APPLICATION BY ABDULRAHMAN RIZIK, MOSES J.K NDWIGA, WAHEED S BAWAZIR, STANLEY MUNGATHIA AND KHAMIS M MUNYANYA FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS

IN THE MATTER OF: THE STATE CORPORATIONS ACT CAP 446 LAWS OF KENYA

IN THE MTTER OF: THE CONSTITUTION OF KENYA

IN THE MATTER OF: GAZETTE NOTICE NUMBER 10227 SPECIAL ISSUE VOL. CXIV – NO. 69 OF 10TH JULY 2012

IN THE MATTER OF: THE REPUBLIC

VERSUS

THE MINISTER FOR TOURISM……..……1ST RESPONDENT

BOMAS OF KENYA LIMITED…….2ND RESPONDENT

EX PARTE

ABDULRAHMAN RIZIK…..……..…….1ST APPLICANT

MOSES J.K NDWIGA……..…….2ND APPLICANT

WAHEED S BAWAZIR ……..……..…….3RD APPLICANT

STANLEY MUNGATHIA ….……..…….4TH APPLICANT

KHAMIS M MUNYANYA……..…….5TH APPLICANT

JUDGMENT

1. By a Notice of Motion dated the 8th of August 2012, the ex-parte applicants herein **Abdulrahman Rizik**, **Moses J K Ndwiga**, **Waheed S Bawazir**, **Stanley Mungathia** and **Khamis M Munyanya** seek the following orders:

i. **An order of certiorari do issue to remove in to the High Court and quash the decision of the First Respondent contained in the Kenya Gazette Notice Number 10227 of 20th July, 2012 in special issue Vol. CXIV – No. 69 revoking the Applicants appointment as the Board Members of Bomas of Kenya to remove into the High and quash Gazette Notice Number 10227 of 20th July, 2012 special issue Vol CXIV-No. 69 to the extent that it appoints Mohammed Abdalla Salim, Anastacia Wakesho, Collins Omondi Haggai, Gideon Ndambuki, Elizabeth Zani Wachira and Immanuel Ichor Imana to replace the applicants as Directors of Board Members of Bomas of Kenya Ltd.**
ii. **An order of prohibition to prohibit the Respondents, their officers, Directors, agents or employees or otherwise howsoever from relying on the Gazette Notice Number 10227 of 2012 in Special issue Vol CXIV- No. 69**
iii. **An order of Mandamus compelling the First Respondent to revoke Kenya Gazette Notice Number 10227 of 20th July, 2012 special issue Vol. CXIV No. 69 to the extent that it revoked the appointments of the applicants and to forthwith reinstate and gazette the applicants as Directors of the Second Respondent in place of Mohammed Abdalla Salim, Anastacia Wakesho, Collins Omondi Haggai, Gideon Ndambuki, Elizabeth Zani Wachira and Immanuel Ichor Imana.**
iv. **That the costs of this Application be provided for.**

Ex-Parte Applicants' Case

2. The Application was founded on the statutory statement and supported by the Verifying Affidavits of each of the Applicants sworn on the 30th of July, 2012 and filed on the 31st of July, 2012. The content of each of the affidavits are similar.
3. According to the Deponents, vide a letter dated the 16th of October 2009 the then Minister of Tourism, Hon Najib Balala identified them for appointment as Board Members of the Bomas of Kenya Ltd for a period of three years.
4. Subsequently on the 20th of July, 2012 in Volume Number CXIV – No. 69 under Gazette Notice Number 10227, the Applicants aver that the Minister of Tourism exercised the powers conferred in him under Section 6(1)(e) of the ***State Corporations Act*** and revoked the appointment of the Applicants to be Board Members of Bomas of Kenya and instead appointed **Mohammed Abdalla Salim, Anastacia Wakesho, Collins Omondi Haggai, Gideon Ndambuki, Elizabeth Zani Wachira and Immanuel Ichor Imana.**
5. According to the Deponents the 1st Respondent unlawfully and wrongfully revoked their appointments thereby affecting their reputations. They depose that this decision is contrary to the law, was made without due process and is in excess of the first respondent's jurisdiction under the ***State Corporations Act***. They contend that the revocation of their appointments by the First Respondent is contrary to public policy and interest. It is their position that it is also oppressive in nature because the 1st Respondent did not accord them a fair hearing prior to the said revocation thus breaching rules of natural justice and the same should therefore be void and a nullity. It is their deposition that the decision to revoke their appointments was unreasonable, arbitrary, manifestly oppressive and unconstitutional.

6. It is the Applicant's position that the 1st Respondent acted recklessly and unfairly contrary to their legitimate expectations and in breach of his express or implied duty to act fairly. They add that the decision to revoke their appointments was arrived at by taking into account irrelevant considerations. According to the deponents' legal advice and in viewof Section 6 of the ***State Corporations Act*** the first Respondent has no power to revoke their appointments and if the courts grant the reliefs sought the Respondents will not suffer any prejudice.

7. According to the Deponents they were appointed to serve for three years as such the First Respondent's act of revocation before the appointed time is ultra vires and subject to review by this court. They stipulate that at no time were they served with a written notice of resignation and neither were they absent without permission of the Minister from three consecutive meetings. It is their view that they have not been convicted of any offence, incapacitated by prolonged illness or conducted themselves in a manner deemed inconsistent with the membership of the Board. They conclude by stating that it will be fair and just to grant the orders sought.

The applicants' Submissions

8. It is the Applicants' submissions that it is a well-established principle of Administrative Law that a public body's decisions and actions are amenable to judicial review if the body or public officer exceeds his statutory powers. They rely on the holding in **Republic vs. The Minister of Industrialization and Kenya Industrial Estates Limited JR Misc. Civil Application Number 70 of 2011** and **Republic vs. Musikari Kombo & 2 Others Misc. Civil Application No. 1648 of 2005.**
9. The Applicants also submit that some employees in public positions may have their employment guaranteed by statute and cannot be lawfully removed unless the formal requirements as laid down in statute are observed. They rely on the case of **Paul Melly vs. Permanent Secretary Treasury Misc. Application No. 1179 of 2003** where it was held that judicial review orders were granted in the case of an employer/employee because the employment was specifically provided for in statute.
10. In regard to the rules of Natural Justice, the Applicants submit that these rules are paramount and in revoking their appointments without any notification to them or granting them an opportunity to be heard, the 1st Respondent was in breach of this cardinal rule. The Applicants rely on the holding in **Republic vs. The Minister of Industrialization and Kenya Industrial Estates Limited** (supra) which stated that the Minister in this case was obligated to give the Applicants reasons for the revocation of their appointments as espoused in Article 47 of the Constitution and to embrace principles of good governance and national values when discharging his duties.

Determination

11. Before dealing with the issues raised in this matter, it is important to determine whether or not the issues raised herein are justiciable in the first place. Justiciability of a matter depends on the nature of the dispute whether the matter is one amenable to the judicial process or whether it is purely a "political question". A political question, it is recognised does not let itself to scrutiny by courts of. This was recognised by **Odoki, J** (as he then was) in **Andrew Lutakome Kayira and Paul Kawanga Semogerere vs. Edwad Rugumayo, Omwony Ojok, Dr. F. E Sempebwa & 8 Others Constitutional Case No. 1 of 1979** where it was held by the Court of Appeal of Uganda as follows:

"The word "appoint" is not defined on the constitution nor in the interpretation Decree. It is a word in common usage in statutory provisions. It is used in various provisions of the Constitution where the President is given power to appoint various officers in government, public services and statutory bodies. In this context, the word appoint is used in its ordinary sense and therefore it must be construed in its ordinary and natural meaning. To appoint a person to an office means to make an authoritative and final decision that a person is to occupy an office or perform the functions of the office……..The word "approve" generally means to confirm some action, which has

been taken or decided upon, or about to be taken or entered into……. If the legislature had intended to subject the appointment of Ministers to approval and ratification by the NCC, there was nothing to stop it from saying so. It is clear that where the President is required to act in accordance with the advice of a certain authority, the statutory provisions specify so. It follows that the President had no legal obligation under the constitution to submit ministerial appointments to the NCC for approval and ratification since to do so would clearly fetter his executive powers…….The removal of Prof. Lule from the office of the Presidency was a political act, which is not justiciable in courts of law but is reserved to political organs of the state. A political question is a question relating to the possession of political power of sovereignty, of government, determination of which is based on Congress and the President whose decisions are conclusive on the courts. The tribunal should be the last to overstep the boundaries, which limit its own foundation. And while it should always be ready to meet any question confined to it by the constitution it is equally its duty to take care not to involve itself in discussions, which properly belong to other forums. No one has ever doubted the proposition that according to the institutions of this country, the sovereignty in every state resides in the state, and that they may alter, and change their form of government at pleasure. But whether they have changed it or not by abolishing an old government, and by establishing a new one in its place, it is a question to be settled by political power. And when that power has decided, the courts are bound to take notice of its decision and follow it. Political questions are not settled on strict legal principles but rather on political considerations and expediency. But fortunately for freedom from political excitements in judicial duties the court can never with propriety be called on to be the umpire in questions merely political. The adjustment of these questions belong to the people and their political representatives, either in the state or general government. These questions relate to matters not to be settled on strict legal principles. These are adjusted rather by inclination or prejudice or compromise, often. Some of them succeed or are defeated even by public policy alone or mere naked power rather than intrinsic right."

12. Similar sentiments have been expressed by this Court in where the Court expressed itself as follows:

"The court agrees that the Office of President is a special and unique office, which has immense, and numerous powers and responsibilities. In the court's view these powers and responsibilities are so vast and important that the President must always direct his undivided time and attention to his duties and responsibilities for the sake of protecting the interests of the public. Presidential immunity is the power and authority that a President has to declare that his or her discussions, deliberations and communications are confidential and secret, therefore out of reach of the jurisdiction of the High Court. It is clear that the President is always vested with certain important and unrestricted political powers and in the exercise of such powers the President is to use his own discretion. However, the President always remains accountable to his country as a political agent. To support and assist the president in performance of his day to day duties and responsibilities, constitutionally he is given the power and authority to appoint certain officers and these officers' acts are the acts of the President because the officers are merely the President's political organs through whom the president will and pleasure are communicated and carried out. The question therefore is whether all persons charged with duties and responsibilities to carry the express and implied political will of the President are immune from actual judicial review when they are said to be acting not as prescribed by law. There is a view that when acting politically and not as provided for and prescribed by the law all executive appointees' actions can only be examined politically and not legally because their acts are covered and provided for under political question doctrine which states that being political acts they are non justiciable and not reviewable by a court. It is the court's view that when the law proceeds to impose on the executive legally prescribed duties and responsibilities, the performance of which depends upon the enhancing or handling of public interest, the political officers of the executive must act consistent and according to the laws of the land…..In the court's view the performance of certain duties and responsibilities is dependent upon individual rights and responsibilities hence the duty to act consistently with and according to the law. If public officers including the President fail to act, and their failure harms the interests of the public and rights of individual citizens, their actions and omissions are subject to judicial review. The protection given to the President under section 14 of the Constitution cannot be absolute and is

only meant to protect the interest of the wider citizens who have a stake in the presidency or who have elected the president to be the symbol of unity and protection of collective and individual rights of all citizens. The constitutional provisions protecting the President from legal proceedings can be said to be against public policy when it is used in a manner likely to affect the interest of an individual or issues concerning human rights and environmental protection which is meant for the greater public good. It is therefore, the duty of the High Court in that regard to say what is the law and those who apply the rule of absolute immunity must of necessity expound and interpret the rule in a broad manner likely to benefit the interest of the wider public and when two interests conflict with each other the court must decide on the operation of each. If the courts are to regard the constitution for the benefit of the citizens, it cannot be said the President is superior to the Constitution and to any other legislation…..The rationale for official immunity applies where only personal and private conduct by a president is at issue. It means that there shall be no case in which any public official can be granted any immunity from suit from his unofficial acts. There has been argument that unless immunity is available, the threat of judicial interference with executive branch through judicial review orders, potential contempt citations and sanctions would violate separation of powers principle. It is also alleged that the fear of answering to court for his actions would impair or limit the president's discharge of his constitutional powers and duties. On the part of the Court, it thinks that the President being a public servant represents the interests of the society as a whole and the conduct of his duties may adversely affect a wide variety of different individuals each of whom may be a potential source of current or future controversy. In some quarters the societal interest in providing the President with maximum ability to deal fearlessly and impartially with the public at large has long been recognised as an acceptable justification for official immunity. The immunity for the President in such circumstances is meant to forestall an atmosphere of intimidation that will conflict with his resolve to perform his designated functions in a principled fashion."

13. Therefore whether or not an issue is justiciable will depend on the legal principles surrounding the particular act done as discernible from the legal instruments appurtenant to the said action. As was held in the above case, when the law proceeds to impose on the executive legally prescribed duties and responsibilities, the performance of which depends upon the enhancing or handling of public interest, the political officers of the executive must act consistent and according to the laws of the land and since the performance of certain duties and responsibilities is dependent upon individual rights and responsibilities, there is a duty to act consistently with and according to the law. If public fail to so act, and their failure harms the interests of the public and rights of individual citizens, their actions and omissions are subject to judicial review.
14. In this case section 6(2) of the Act provides as follows:

Every appointment under subsection (1)(a) and (e) shall be by name and by notice in the Gazette and shall be for a renewable period of three years or for such shorter period as may be specified in the notice, but shall cease if the appointee-

(a) Serves the Minister with written notice of resignation; or

(b) Is absent, without the permission of the Minister notified to the Board, from three consecutive meetings; or

(c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding two thousand shillings; or

(d) Is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board; or

(e) Conducts himself in a manner deemed by the Minister, in consultation with the Committee, to be inconsistent with membership of the Board.

15. It has been contended by the applicants that they were not given any reasons for the revocation of

their appointment. The Respondents on their part have not adduced before this Court any evidence or basis upon which the applicants' appointments were revoked.

16. According to the Applicants the revocation of their appointment breached the rules of natural justice. It is paramount at this juncture that this court establishes the ingredients and/or components of natural justice. The principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process. The ingredients of fairness or natural justice that must guide all administrative decisions are, firstly, that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by a decision-maker; secondly, that no one ought to be judge in his or her case and this is the requirement that the deciding authority must be unbiased when according the hearing or making the decision; and thirdly, that an administrative decision must be based upon logical proof or evidence material.
17. A recent articulation of the elements of procedural fairness in the administrative law context was provided by the Supreme Court in **Baker v. Canada (Minister of Citizenship & Immigration) 2 S.C.R. 817 6** where it was held:

"**The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decision affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions."**

18. The Court further emphasized that procedural fairness is flexible and entirely dependent on context. In order to determine the degree of procedural fairness owed in a given in case, the court set out five factors to be considered: (1) The nature of the decision being made and the process followed in making it; (2) The nature of the statutory scheme and the term of the statute pursuant to which the body operates; (3) The importance of the decision to the affected person; (4) The presence of any legitimate expectations; and (5) The choice of procedure made by the decision-maker.
19. Vide a letter dated the 16th of October 2009 the 1st Respondent identified the Applicants for appointment as Board Members of the 2nd Respondent and then subsequently revoked the said appointments vide a gazette notice number 10227 and instead appointed **Mohammed Abdalla Salim, Anastacia Wakesho, Collins Omondi Haggai, Gideon Ndambuki, Elizabeth Zani Wachira and Immanuel Ichor Imana.**

13. It is the applicants' case that their appointment to the Board was statutorily underpinned. The issue of stator underpinning was dealt with by the Court of Appeal in **Eric V J Makokha & 4 Others vs. Lawrence Sagini & 2 Others Civil Application No. Nai. 20 of 1994,** in which the said Court expressed itself as follows:

"The word "statutory underpinning" is not a term of art. It has a recognised legal meaning. Accordingly, under the normal rules of interpretation, the Court should give it its primary meaning. To underpin, is to strength. In a case in which the issue is whether an employer can legitimately remove his employee, a term which suggests that his employment is guaranteed by statute is hardly of any help. As a concept, it may also mean, the employee's removal was forbidden by statute unless the removal met certain formal laid down requirements. Pure master and servant…mean there is no element of public employment or service in support by statute, nothing in the nature of an office or status which is capable of protection. If any of these elements exist, there is, whatever the terminology used and though in some inter partes aspects, the relationship may be essential procedural requirements to be observed and failure to observe them may result in a dismissal being declared null and void.....What it means is that some employees in public positions may have their employment guaranteed by statute and could not be lawfully removed unless the formal requirements laid down by the statute were observed. It is possible this is the true meaning of what has become the charmed words "statutory underpinning". If this is correct, we can readily conceive of some of such public positions. For instance, under section 61 of the Constitution of Kenya, judges are appointable by the President and removable by him. But he

cannot lawfully exercise the power of removal unless for specified misdoings and unless a tribunal appointed specifically for the purpose after investigating such conduct, recommends to him such removal. So it can accurately be said that the tenure of judges was protected by the Constitution. The same applies to other constitutional office holders such as the Attorney General, Auditor General and others. Even an ordinary office holder can be protected by statute. For instance, section 23(3) of the University of Nairobi Act mandate the Council of the University to keep proper books and records of account of the University as well as its expenditure. The accounts must be audited by the Auditor General and subsection 4 says in telling words; 'The employment of an auditor shall not be terminated by the council without the consent of the Minister in concurrence with the Controller-General'. So to that extent the position of an auditor is statutorily underpinned. It is difficult to see in what sense the tenure of lecturers of the University of Nairobi can properly be said to be "statutorily underpinned". The record shows that by section 19 of their terms of service, each category of academic staff can terminate his services with the University by giving notice according to their academic rank: if they should leave their appointments without giving the stipulated notices, they would have been in breach of contract. It is well established that they cannot be forced to resume their office by the equitable remedy of specific performance. So, the only remedy the University can pursue against them would be a claim for damages for breach of contract. Equitable remedies are said to be mutual. If that is so, if the University itself commits a breach of contract against them, the mutuality rule would dictate that they, for their part, can only seek damages against the University for breach of contract. If the University can properly compel them to return to its service by equitable remedy of specific performance, then, and then only, can they claim as a remedy against the University the coercive equitable remedy of specific performance. To compel performance of a contract of personal service in this way, will turn a contract of service into a status of servitude."

14. It is important to determine at this juncture whether the public law duty of procedural fairness should be applied to employment relationships. Section 6 (1) of the ***State Corporations Act*** expressly provides that every appointment shall be by name and by notice in the gazette and subsection (2) elucidates how an appointee shall cease to be a member of the Board. It is therefore established that the appointment to the Board of the 2nd Respondent as well as the parameters within which the appointment of the Applicants could have been revoked has statutory underpinning. As such in the absence of a contract of employment, it is clear to me that the remedies available to the Applicants lie in public law.
15. Article 47 of the Constitution provides for the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
16. In **Onyango Oloo vs. Attorney General [1986-1989] EA 456** the Court of Appeal expressed itself as follows:

"The rules of natural justice apply to administrative action in so far as it affects the rights of the appellant and the appellant's legitimate expectation to benefit from the remission by a release...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...To consider" is to look at attentively or carefully, to think or deliberate on, to take into account, to attend to, to regard as, to think, hold the opinion... "Consider" implies looking at the whole matter before reaching a conclusion...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 or 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.*"

13. In this case no reasons for the revocation were given. In **Re Hardial Singh and Others [1979] KLR 18; [1976-80] 1 KLR 1090,** the Court expressed itself as follows:

"The court can therefore interfere with the decision of a Minister if the Minister does not act in good faith, or if he acts on extraneous considerations which ought not to influence him, or if he plainly misdirects himself in fact or in law……..In the ordinary way and particularly in cases, which affect life, liberty or property, a Minister should give reasons and if he gives none the court may infer that he had no good reasons.……Orders made must comply with the Act, and if they do not so comply in important aspects, they will be null and void……. The courts would be no rubber stamp of the executive and if Parliament gives great powers to the Minister, the courts must allow them to him: but, at the same time, they must be vigilant to see that he exercises them in accordance with the law. He must act within his lawful authority……..An act, whether it be of a judicial, quasi-judicial or administrative nature, is subject to the review of the courts on certain grounds. The Minister must act in good faith; extraneous considerations ought not influence him; and he must not direct himself in fact or law…..It is clear that both sections 187(1) and (4) require the Minister to be "satisfied". It gives him a discretion; and it is his discretion to act upon the facts before him, and not for the court to sit on appeal so as to impose its judgement on the facts upon the Minister. There is no doubt that the Minister acted in good faith. But the Minister had to have certain facts before him. The farms had to be managed and supervised; that had to be done so inadequately that the result was necessity to prevent or delay deterioration. The Minister did not give evidence but he swore an affidavit.….It is clear that the reasons given in the order for sale illustrate that the Minister had asked himself the wrong question; it being a question not enjoined upon him by the Act. He had therefore misdirected himself in law and that order is null and void."

20. In the impugned gazette notice the 1st Respondent purported to rely on section 6(1)(e) of the Act. Whereas under the said provision the Minister could revoke the appointments where the applicants conducted themselves in a manner deemed by the Minister, in consultation with the Committee, to be inconsistent with membership of the Board, in my view there must be in existence a conduct which is deemed to be inconsistent with the membership of the Board. It is only thereafter that the Minister can then deem that exist conduct to be inconsistent with the membership of the Board. In other words it is not open to the Minister to concoct as it were a conduct and then rely on that to deem the same as inconsistent with the membership of the Board. The existence of such a conduct must in my view is a condition precedent to the exercise of the Minister's powers which obviously was required to be with the consultation of the Committee. In this case we have not been informed what the conduct or misconduct was in the absence of which this Court is left with no option but to conclude that there was no basis upon which the applicants' membership of the Board was revoked. If there were then they must have been extraneous.
21. In the case of **Peter Okech Kadamas vs. Municipal Council of Kisumu Civil Appeal No. 109 of 1984 [1985] KLR 954; [1986-1989] EA 194 Platt, JA** held that:

"Wherever any person or body of persons has authority conferred by legislation to make decisions affecting the rights of the subjects, it is amenable to the remedy of an order to quash its decisions either for an error of law in reaching it, or for failure to act fairly towards the person who will be adversely affected if the decision of failing to observe either one or other to the two fundamental

rights accorded him of the rules of natural justice or fairness, viz: to have afforded to him a reasonable opportunity of learning what is alleged against him and of putting forward his own case in answer to it, and to the absence of personal bias against him on the part of the person by whom the decision falls to be made."

22. It must be remembered that under Article 10 of the Constitution some of the national values and principles of governance are transparency and accountability, the rule of law and human dignity. Under the said Article, all State organs, State officers, public offers and all persons are enjoined whenever they make or implement public policy decisions to be bound by the said values and principles. To revoke the applicants' appointment without disclosing the reasons therefor clearly violated the aforesaid values and principles.
23. On the issue of legitimate expectation in **Glencar Exploration Plc. vs. Mayo County Council (No. 2) (2002) 1 IR 84, 162 – 163** it was held:

"Firstly, the public authority must have made a statement or adopted a position amounting to a promise or representation, express or implied as to how it will act in respect of an identifiable area of its activity. I will call this the representation. Secondly, the representation must be addressed or conveyed either directly or indirectly to an identifiable person or group of persons, affected actually or potentially, in such a way that it forms part of a transaction definitely entered into or a relationship between that person or group and the public authority or that the person or group has acted on the faith of the representation. Thirdly, it must be such as to create an expectation reasonably entertained by the person or group that the public authority will abide by the representation to the extent that it would be unjust to permit the public authority to resile from it."

24. In the circumstances of this case, I am not satisfied that the principle of legitimate expectation applied.
25. I am however satisfied that the procedure employed by the 1st Respondent in revoking the appointment of the Applicants was not based on the provisions of Section 6 (2) of the ***State Corporations Act*** and as such the same was arbitrary and unfair and the manner in which the revocation was done completely flouted the rules of natural justice. In arriving at this conclusion I associate myself with the decisions made in **Republic vs. The Minister of Industrialization and Kenya Industrial Estates Limited JR Misc. Civil Application Number 70 of 2011** and **Republic vs. Musikari Kombo & 2 Others Misc. Civil Application No. 1648 of 2005.**
26. In the result I find merit in the Notice of Motion dated 8th of August 2012.

Orders

27. Consequently, I issue the following orders:

1. **An order of certiorari removing in to this Court for the purposes of being quashed the decision of the 1st Respondent contained in the Kenya Gazette Notice Number 10227 of 20th July, 2012 in special issue Vol. CXIV – No. 69 revoking the Applicants appointment as the Board Members of Bomas of Kenya to the extent that it appoints Mohammed Abdalla Salim, Anastacia Wakesho, Collins Omondi Haggai, Gideon Ndambuki, Elizabeth Zani Wachira and Immanuel Ichor Imana to replace the applicants as Directors of Board Members of Bomas of Kenya Ltd which decision is hereby quashed.**
2. **An order of prohibition to prohibit the Respondents, their officers, Directors, agents or employees or otherwise howsoever from relying on the Gazette Notice Number 10227 of 2012 in Special issue Vol CXIV- No. 69**
3. **Having quashed decision, it is nolonger necessary to issue the order of mandamus sought.**
4. **The applicants will have the costs of this application.**

Dated at Nairobi this day 21st of March 2014

G V ODUNGA

JUDGE

Delivered in the absence of the parties: