



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CONSTITUTIONAL PETITION NUMBER 8 OF 2014**

**INTERNATIONAL LEGAL CONSULTANCY GROUP.....PETITIONER**

**VERSUS**

**THE SENATE.....1<sup>ST</sup> RESPONDENT**

**CLERK OF THE SENATE.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Petitioner filed the Petition dated 17<sup>th</sup> February 2013, challenging the decision of the Senate to summon the nine (9) County Governors and County Executive Members responsible for finance to appear before it and produce various documents and respond to various issues with regard to county finance and fiscal management within their counties. The said summons dated 8<sup>th</sup> February, 2014 were issued pursuant to the provisions of Article 125 of the Constitution. The nine Governors summoned (hereinafter “the Governors”) were as follows;

- i. Kenneth Lusaka of Bungoma County
- ii. Isaac Ruto of Bomet County
- iii. William Kabogo of Kiambu County
- iv. Julius Malombe of Kitui County
- v. Jack Ranguma of Kisumu County
- vi. Kinuthia Mbugua of Nakuru County
- ix. Samuel Tunai of Narok County
- x. Hussein Dado of Tana River County and
- xi. Ahmed Abdullahi of Wajir County

**Background**

2. The Petition was filed at the Nairobi High Court as Nairobi Petition No. 74 of 2014. Simultaneously with the Petition, the Petitioner also filed an application dated 17<sup>th</sup> February, 2014 seeking interlocutory relief. Through a ruling dated 19<sup>th</sup> February, 2014 the Hon. Mumbi Ngugi J issued interim orders restraining the respondents from summoning the Governors and the County Executive Committee members responsible for finance pending the hearing and determination of the suit. She further granted the orders prayed to suspend the summons dated 8<sup>th</sup> February, 2014 issued to the respective Governors and County Executive Committee members of finance pending the hearing and determination of the petition.

3. Additionally, Hon. Mumbi Ngugi J directed that the Petition be referred to the Chief Justice for the purposes of constituting a bench of uneven number of judges to hear and determine the Petition. On March 10<sup>th</sup>, 2014, the Hon. Chief Justice directed that the Petition be transferred to this Court and be heard and determined by this bench.

## The Petitioner's Case

4. In the affidavit sworn on 17th February 2014 both in support of the Petition and the interlocutory application, Kipkoech Tanui, the Advocacy Manager of the Petitioner, deposes that the Petitioner is a public interest organization that champions the observance of the rule of law. He averred that the 1<sup>st</sup> Respondent and its Standing Committee on Economic and Finance affairs through the Clerk of the Senate, issued witness summons dated 8<sup>th</sup> February, 2014 to the Governors and County Executive Committee members for finance to appear before it on diverse dates from 19<sup>th</sup> February, 2014 and answer to questions with respect to County fiscal management. It was contended that the said summons contravene Article 226(2) of the Constitution.

5. The Petitioner asserted that the Senate's role under Article 96 of the Constitution is to *inter alia* participate in the law making function of Parliament by considering, debating and approving Bills concerning counties; to represent the counties and serve to protect their interest and to determine the allocation of National revenue among counties as provided for in Article 217 . That therefore the Senate under Article 6(2) and Article 189 of the Constitution can only exercise its powers to summon strictly when exercising its Constitutional roles.

6. It was claimed that the Senate's oversight role over Nationally collected revenue is not identical to the County Assembly's role over the County Executive Committee which is the executive arm of the County Government. That therefore the Senate cannot scrutinize county expenditures in the same way the committees and general assemblies of the County legislatures can. In the foregoing, the Petitioner averred that the Senate's power is limited to oversight over national agencies which manage National revenue allocated to counties such as the National treasury.

7. It is also the position of the Petitioner that the Senate only has the powers to scrutinize county financial records under limited circumstances. That this include instances when the senate is called upon to make a determination with regard to the impeachment of a County Governor and further when it purposes to develop National legislation necessary for prudent management of public finances at the county level. The Petitioner therefore asserts that the Senate's oversight role should be exercised in accordance with the Constitution and should refrain from acting in excess of its mandate. Consequently the Petitioner claims that the summons by the Senate issued to the Governors and the County Executive Committee members for finance are unconstitutional.

8. The Petitioner is therefore seeking the following reliefs;

*i. A declaration that resonating the intention of Articles 2,3, 10 and within the intendment of Articles 159(1), 160(1) and 259 of the Constitution of Kenya if the Constitution makes provisions as to how the legislature should conduct its internal affairs or as to the mode of the exercise of its legislative powers, a Court of law can exercise its jurisdiction to ensure the legislature comply with the Constitutional requirement.*

*ii. A declaration that resonating the intention of Article 96 and 226(2) of the Constitution of Kenya and section 148 of the Public Financial Management Act 2012 and Section 30 of the County Government Act, 2012, the Senate cannot summon Governors to personally appear before it to answer questions on County Government finances.*

*iii. A declaration resonating the intention of Article 96 and Article 226(2) of the Constitution of Kenya that the Senate cannot summon an accounting officer of the County Government to answer questions on county financial management. This is an exclusive power of the County Assembly.*

*iv. A declaration that resonating the intention of Article 96 of the Constitution and within the meaning of Article 226(2) of the Constitution of Kenya, the Senate's oversight role over nationally collected revenue to counties is not identical to the County Assembly's oversight over the executive.*

*v. A declaration that resonating the intention of Article 96 of the Constitution and Article 226(2) of the Constitution of Kenya the Senate's power is limited to oversight over national agencies which manage national revenue allocated to counties such as the National Treasury.*

*vi. A declaration that the Senate can only exercise its powers under Article 125 of the Constitution to scrutinize county financial and other records for purposes of making a determination with regard to an impeachment, intervention in a county, suspension of a county, or for purposes of developing national legislation necessary for more prudent management of finances at the County level.*

*vii. A permanent injunction to be issued to restrain the Senate from summoning County Governors to appear before it to answer questions on public financial management.*

*viii. A permanent injunction to be issued to restrain the Senate from summoning County Executive Committee Members to appear before it to answer questions on county public financial management.*

*ix. A permanent injunction be issued to restrain the Senate from summoning accounting officers at the County level to appear before it to answer questions on county public financial management.*

*x. There be no orders as to costs.*

9. The 1st and 2nd Respondents (hereinafter "the Respondents") did not enter appearance in respect to the Petition. The Affidavits filed in Court indicate that the Petition was served on the Senate and Clerk of the Senate on the 17<sup>th</sup> of February, 2014. Hearing notices were also served on the Respondents. Despite such service, the Respondents did not file any responses to the Petition and were not represented in court

during the hearing.

10. Consequently, Mr. Ahmednasir Abdullahi Senior Counsel (SC) assisted by Mr. Peter Wanyama presented the Petitioner's case ex parte.

### **Petitioner's Submissions**

11. It was Mr. Abdullahi's submission that this petition was premised on a number of grave breaches of the Constitution. That the crux of the matter was about the interaction between the National and County Governments. Mr. Abdullahi stated that the petition was triggered by the actions of the Senate's standing Committee on Finance, Commerce and Economic Affairs when it issued summons to governors and county executive members of finance to appear before it and explain how money allocated to their respective counties was expended and utilized. It was alleged that by summoning the Governors, the Senate not only breached the constitution but attempted to wreak havoc on the delicate balance that exists between the two levels of Government.

12. It was also Mr. Abdullahi's contention that the Senate usurped the oversight role accorded to the County Assemblies by the Constitution when it issued the summons. Moreover, it was Counsel's submission that the Senate was trying to subjugate the County Government, which was unconstitutional. That if such an attempt is not checked by this court, the Senate would uproot an important pillar of our Constitutional dispensation which stipulates that no level of the Government is subordinate to the other under Article 6(2). He also claimed that if the Senate's action were left to stand, the same would be a direct assault on devolution.

13. Mr. Abdullahi moreover cited several provisions of the Constitution in support of the Petitioner's claims. He argued that Articles 1 (3) and (4) of the Constitution were explicit that there are two levels of Government, that is the County and the National Governments, and that none is lesser than the other. He also relied on Article 2(2) which states that no person may claim any authority or exercise any power not granted by the Constitution. Mr. Abdullahi further submitted that Article 3 of the Constitution imposes an obligation on everyone to respect and uphold the Constitution and the rule of law. He also emphasized that under Article 6(2) of the Constitution, the County and National Governments are distinct and interdependent and should conduct their relations on the basis of consultation and co-operation. That this fundamental tenet of the Constitution was breached when the Senate purported to issue summons to the members of the County Government.

14. It was also pointed out that under Article 93, the Constitution provides for the establishment of Parliament which consists of the National Assembly and the Senate. It was his further submission that Article 94 outlines the role of Parliament. He went on to add that Article 95 (4) (c) of the Constitution mandates the National Assembly to exercise oversight over National revenue and its expenditure. He thus submitted that this infers that the National Assembly supervises and checks how the National Government spends the national revenue allocated to it.

15. With regard to the Senate Mr. Abdullahi, contended that Article 96 of the Constitution assigns the role of Senate. That under Article 96(3) of the Constitution, the Senate has the obligation of determining the allocation of national revenue among counties as provided in Article 217 of the Constitution and exercises oversight over the National revenue allocated to the County Governments. It was therefore Mr. Abdullahi's claim that under this provision, the Senate does not have the powers to oversee expenditure of the County Governments. He restated that this power is only vested in the County Assemblies of the various County Governments as stipulated in the County Government Act of 2012.

16. On the issue of summoning the County Executive committee members of finance from the various counties, it was Mr. Abdullahi assertion that Article 179(1) and Article 183 of the Constitution sets out the roles and functions of the County Executive Committees. That the County Executive Committee is vested with the executive authority of a county. While citing Article 189(1)(a) of the Constitution on the relationships between Governments, it was Mr. Abdullahi's argument that the summoning of the executive arm of the County is unconstitutional as the same is a preserve of the respective County Assemblies. He further submitted that Article 226 (2) of the Constitution answers the lacuna in Article 96 of the Constitution. Mr. Abdullahi contended that under Article 226(2) of the Constitution the accounting officer of a National public entity is accountable to the National Assembly for its financial management while the accounting officer of a County public entity is accountable to the county assembly for its financial management. To that end, Mr. Abdullahi alleged that the effect of Article 226(2) is that all National Public entities are answerable to the National Parliament, while all county public entities are answerable to the County Assemblies. According to him, the Senate does not feature in this chain of accountability.

17. In his further submissions, Mr. Abdullahi contended that the Senate while summoning the Governors and the County Executive Committee members for finance indicated that they did so under Article 125 of the Constitution. It was argued that the citing of the aforementioned provision of law was a misguided attempt by the Senate to support its illegal actions. Mr. Abdullahi opined that the Article 125 and Article 195 which give power Parliament and County Assemblies power to summon any person to give evidence on any issue are merely procedural provisions that facilitate both houses of Parliament and/or the County Assembly in gathering of evidence over matters in which they were constitutionally mandated to deal with. That the said Articles of the Constitution can only be used to compel a relevant and compellable witness and cannot be misused to summon anybody the Senate so wishes. Mr. Abdullahi urged the Court to adopt the reasoning of the Court in the ***Supreme Court Advisory Opinion No. 2 of 2013 Speaker of the Senate & Another –vs- Hon. Attorney General & 3 Others*** and ***Tinyefuza –v- Attorney General Const. Petition No. 1 of 1996 (1997 UGCC 3)*** while interpreting Article 125 and 195 of the Constitution.

18. On his part, Mr. Wanyama concurred with the submissions of Mr. Abdullahi. It was his contention that County Executive members, including accounting officers at the county level are accountable to the County Assemblies and other institutions set out in both the Constitution and other statutes. Mr. Wanyama asserted that there is a distinct framework of accountability of county financial resources under the Constitution and various statutes.

19. He referred to Articles 228 and Article 229 of the Constitution which provides for the office of the Controller of Budget, who is mandated to submit to each house of Parliament a report on the implementation of budgets of the National and County Governments every four months. In addition, it was Mr. Wanyama's submission that under Article 229(8) of the Constitution, the Auditor General must also submit a report to Parliament or the relevant County Assembly with regard to various audit queries raised, for debate and necessary action.

20. It was also his position, that the Senate's role is well articulated under Article 96 of the Constitution. That the same includes the mandate to protect devolution and the interest of counties only at the National level. It is on this premise, that Mr. Wanyama argued that the Senate and County Government are supposed to co-operate and work together and not against each other. He also contended that the Senate only has the powers to scrutinize county financial and other records under special circumstances such as;

- a. when the Senate is intervening in a County where there is stoppage of funds by the National Government;
- b. in the case of suspension a County under Article 192 of the Constitution;
- c. during impeachment proceedings of a County Governor under Article 181 of the Constitution; and
- d. for the purposes of developing legislation necessary for prudent financial management at the county level.

To that end, it was Mr. Wanyama's opinion that the Senate has no role in the general oversight of county resources but that such function vests exclusively on the County Assembly.

21. The Court was also referred to the provisions of the Public Finance Management Act of 2012 (hereinafter referred to "as the Act") by Mr. Wanyama. He submitted that the Act provides for a clear and elaborate regime with respect to accountability of county financial resources. That under Part 2 and 3 of the Act, the same provides for a framework to give effect to Article 226(3) of the Constitution. He urged the Court to examine the provisions of Part IV of the Act with respect to the County Government responsibilities concerning the management and control of public finance. It was in addition contended that under Part IV of this Act, no role has been ceded to the Senate. It was therefore Mr. Wanyama's position that under this framework, the issues raised by the Senate in the summons to the County Governors and the County Executive Committee members of finance can be adequately dealt with by the County Assemblies of the respective counties.

22. It was also Mr. Wanyama's submission that where there are issues at the County level that require National intervention, the Act also provides for the Intergovernmental Budget and Economic Council ("the council") established under Section 187 which adequately addresses any concerns raised by the Counties. He emphasized that the Council has full representation drawn from both the national and county government and supports the spirit behind Article 6(2) of the Constitution. That inter alia, the Council decides how much shall be disbursed to each County from the consolidated fund.

23. Lastly, while submitting on the issue of jurisdiction, it was Mr. Wanyama's contention that under article 165(3)(d)(i)(ii) and (iii) the Court can mediate in disputes relating to the constitutional powers of state organs in respect of County Governments and the Constitutional relationship between levels of Government, without offending the principle of separation of powers. That therefore, when a state organ acts in excess of its mandate, the Court can effectively injunct such actions. He cited the *Supreme Court Advisory Opinion No. 2 of 2013 (supra)* in support of this argument. Mr. Wanyama therefore urged the Court to find that the Senate's actions to summon the Governors and the County Assembly Committee members for finance had no basis in law and that the said action was in breach of the Constitution and the law. He also urged the Court to declare that the Senate is bound by the requirements of Article 6 of the Constitution with regard to consultation and co-operation among the two levels of Governments. The Petitioner therefore asked the Court to grant the prayers sought in the Petition.

#### **Issues for Determination**

24. Having set out the Petitioner's submissions as above, we are of the view that there are two issues for determination which can be narrowed down into three broad categories. These are;

- i. Whether this Court has the jurisdiction to hear this matter
- ii. Whether the summoning of the Governors by the Senate and the County Executive Committee members of Finance and demanding that they produce certain documentation in responding to financial management in their respective counties is unconstitutional.
- iii. Whether the Petitioner is entitled to the Reliefs Sought.

#### **Whether the Court has jurisdiction**

25. It is the Petitioner's contention that this Court has jurisdiction to determine the Constitutionality of the acts of the Senate in summoning the County Governors and the County Assembly Members of finance under Article 125 of the Constitution. Though the Court does not have the benefit of the Senate's response, we are alive to the fact that jurisdiction is indeed the first issue a Court should determine at the outset of the proceedings because without it, the entire proceedings become a nullity. See the case of *The Owners of Motor Vessel "Lillian S". v Caltex Oil Kenya Ltd [1989] KLR 1 14*

26. The High Court is established under Article 165(1) of the Constitution. The jurisdiction to interpret the Constitution is specifically provided for under Article 165 (3) (d) which provides thus;

***"(3) Subject to clause (5), the High Court shall have—***

***(a)....***

***(b)....***

(c)....

(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 of 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.....” (emphasis added)*

27. From the above, it cannot be disputed that this Court is clothed with the jurisdiction to hear any question concerning the interpretation of the Constitution. Additionally, in exercising its judicial authority, this Court is obliged under Article 159(2) to protect and promote the purpose and principles of the Constitution. In Article 259 of the Constitution this Court is also enjoined to interpret the constitution in a manner that promotes its purposes, values and principles, advances the rule of law, human rights and fundamental freedoms in the Bill of Rights and which contributes to good governance.

28. With regard to the separation of powers doctrine, Article 1 of the Constitution reposes the sovereign power to the people of Kenya but provides for the delegation of that power to various State organs. These include Parliament, the County Assemblies, the Executive at the National and County levels of Government, the Judiciary and independent Tribunals/Commissions. To facilitate the proper and effective exercise of the delegated power, the Constitution allocates functions, powers and responsibilities to all these organs. While we agree that every State organ should be accorded the space to perform its Constitutional mandate without undue interference, Article 2 of the Constitution states thus;

*i. “ This Constitution is the Supreme law of the Republic and binds all persons and all State organs at both levels of Government.*

*ii. No person may claim or exercise State authority except as authorized under this Constitution” (emphasis added)*

29. This means that no person or state organ is above the law and above the Constitution. All organs created by the Constitution are subordinate to it. Further, Article 10(1) of the Constitution binds all State organs, State officers, public officers and all persons when applying and interpreting the Constitution. Therefore when any of these organs steps outside its area of operation as assigned by the Constitution, this Court will not hesitate to state so. The Supreme Court has ably captured this in *Re The Matter of the Interim Independent Electoral Commission Application No. 2 of 2011 (Unreported)* where it expressed itself as follows;

*“The effect of the Constitution's detailed provision for the rule of law in the process of governance, is that the legality of executive or administrative actions is to be determined by the Courts, which are independent of the executive branch. The essence of separation of powers, in this context, is that the totality of governance-powers are shared out among different organs of Government, and that these organs play mutually-countervailing roles. In this set-up, it is to be recognized that none of the several Government organs functions in splendid isolation.”*

30. The Court of Appeal also touched on the doctrine of Separation of powers in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others, Civil Appeal No. 290 of 2012*, where it expressed itself as follows;

*“It is not in doubt that the doctrine of separation of powers is a feature of our Constitutional design and a per-commitment in our Constitutional edifice. However, separation of power does not only proscribe organs of Government from interfering with the other's functions. It also entails empowering each organ of Government with countervailing powers which provide checks and balances on actions taken by other organs of Government. Such powers are, however, not a license to take over functions vested elsewhere. There must be judicial, legislative and executive deference to the repository of the function. We therefore agree with the High Court's dicta in the petition the subject of this appeal that: Separation of powers must mean that the Courts must show deference to the independence of the Legislature as an important institution in the maintenance of our constitution democracy as well as accord the executive sufficient latitude to implement legislative intent. Yet as the Respondents concede, the Courts have an interpretive role, including the last word in determining the Constitutionality of all Governmental actions.”*

31. Also in the case of *Doctors for Life International v. Speaker of the National Assembly and Others (CCT 12/05) [2006] ZACC 11*, it was held;

*“...under our Constitutional democracy, the Constitution is the supreme law. It is binding on all branches of Government and no less on Parliament. When it exercises its legislative authority, Parliament ‘must act in accordance with, and within the limits of, the Constitution”*

32. We are duly guided. And having expressed ourselves as above, we find that this Court can intervene in actions of other arms of government and state organs where there exists a violation or threatened violation of the Constitution. The Petition before us presents one such instance. The Senate is alleged to have overstepped its mandate by summoning County Governors and County Executive Committee members, which according to the Petitioner, is contrary to Articles 6(2) and 226(2) of the Constitution.

33. It is also noteworthy, that this Court has been called upon to interpret various Articles of the Constitution with regard to the role of the

Senate vis-a-vis the County Assemblies in terms of oversight of financial resources allocated to the counties. It is against this background that we find that this Court indeed has the jurisdiction and power to hear and determine the matters raised in the Petition in regard to the Constitutionality of the actions of the Senate.

**Whether the Senate acted unconstitutionally by summoning the Governors and the Members of the County Executive Members of Finance**

34. Before we proceed to determine the Constitutionality or otherwise of the summons by the Senate, we find it necessary to set out what the Constitution provides in terms of devolution. The promulgation of the Constitution of Kenya 2010 brought with it drastic changes in Kenya's system of Governance. It introduced devolution which overhauled the centralized system of Government which existed prior to the enactment of the new Constitution. Devolution as a form of decentralization can be defined as the process of transferring decision-making and implementation powers, functions, responsibilities and resources to legally constituted, and popularly elected local governments known as Counties. The Constitution of Kenya 2010 has thus established a multi-level system of Government often referred to as a devolved system of Government.

35. Article 1(4) of the Constitution is reflective of this position as it provides that the sovereign power of the people is exercised both at the National and County Level. Further under Article 6(2) of the Constitution, it is clear that the Governments at the National and County levels are distinct and interdependent and are mandated to carry out their mutual relations on the basis of consultation. We are therefore in agreement with the submissions of Mr. Abdullahi (SC) that none of the levels of Government should be treated as subordinate to the other.

36. The National and County Governments are also equal partners in the devolved structure though they are autonomous. This autonomy encompasses certain distinct features such as political autonomy, functional autonomy, financial autonomy and administrative autonomy. Nonetheless, despite this autonomy, it is recognized that both levels of Government are interrelated and need to work together to discharge their various functions for the benefit of the Kenyan people. Though each level of Government is separate and distinct, none can work in isolation. Due to this interrelation, the Constitution mandates co-operation and consultation between the two levels of Government to ensure that devolution works for the benefit of the Kenyan people.

37. Central to the devolution structure of Government is the bicameral Parliament, which under Article 93 of the Constitution comprises of the National Assembly and the Senate. These legislative bodies have their responsibilities ascribed by the Constitution and have to work together to discharge some of their functions. Such functions include the impeachment of the President and Deputy President under Article 145 and 150 of the Constitution. Another instance where both the Senate and the National Assembly have to work together is during the enactment of the Division of Revenue Bill and the County Allocation Revenue Bill. However, under Article 96 of the Constitution, the role of the Senate is broadly set out as representing the counties and protecting their interests. The said Article provides as follows;

***“96. (1) The Senate represents the counties, and serves to protect the interests of the Counties and their Governments.***

***(2) The Senate participates in the law-making function of parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113.***

***(3) The Senate determines the allocation of National revenue among counties, as provided in Article 217, and exercises oversight over National revenue allocated to the County Governments.***

***(4) The Senate participates in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with Article 145.” (emphasis added)***

38. From the above, it is clear that the Senate plays a vital role in the implementation of the Constitution, particularly with respect to devolution. The Supreme Court in ***Supreme Court Advisory Opinion No. 2 of 2013 (supra)*** recognized this when it stated thus;

***“[144] It is evident that the Senate, though entrusted with a less expansive legislative role than the National Assembly, stands as the Constitution's safeguard for the principle of devolved government. This purpose would be negated if the Senate were not to participate in the enactment of legislation pertaining to the devolved units, the counties [Article 96(1), (2) and (3)].”***

39. In view of the foregoing, it is not in doubt that the Senate represents the Counties, and serves to protect the interests of the counties and their Governments at the National level. It is mandated to participate in the law-making function of Parliament by considering, debating and approving Bills concerning the Counties. The Senate also determines the allocation of National revenue among counties and exercises oversight over National revenue allocated to the County Governments. It also participates in the oversight of the Governors by considering resolutions with regard to their removal or impeachment under Article 181 of the Constitution. In our considered view, the Senate and the County Governments are constitutionally designed to work together in ensuring the fruits of devolution. It is therefore our position that the Senate, which is at the National level of Government, has a critical role in ensuring that the counties interests are protected at the National Level of Government.

40. Bearing the above in mind, it is vital to determine under what provision of the law, the Senate summoned the Governors and the members of the County Executive Committees. As noted earlier on in this judgment, the Senate did not file any response in answer to this Petition. The Court does not therefore have the benefit of its responses. Likewise, the Court does not have any material before it on the basis of which it can determine under what circumstances or power the Senate summoned the Governors apart from the documentation presented by the Petitioner.

41. We have seen, the summons issued to the Governors which have been annexed to the affidavit of Mr. Kipkoech Tanui. A cursory examination of the same reveals that the summons were issued under Article 125 of the Constitution and Sections 14 and 15 of the National Assembly (Powers and Privileges) Act (Cap 6) as read together with Section 7 of the Sixth Schedule to the Constitution which empowers the

Senate to summon any person to appear before it for the purpose of giving evidence or providing information. The said summons required the Governors to produce in respect of their counties to the Standing Committee on Finance, Commerce and Economic Affairs the following documents;

*i. A written response to the issues raised by the Controller of Budget in the County Budget Implementation Review Report for the First Quarter of the Fiscal Year 2013/14;*

*ii. Approved Budget Estimates for the fiscal year 2013/14;*

*iii. Approved Supplementary Estimates for the Fiscal year 2013/14; and*

*iv. All other relevant documentation in (their) possession. (emphasis added)*

42. It is thus important to examine Article 125 of the Constitution. The same provides as follows;

***“(1) Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information.***

***(2) For the purposes of clause (1), a House of Parliament and any of its committees has the same powers as the High Court —***

***(a) To enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;***

***(b) To compel the production of documents; and***

***(c) To issue a commission or request to examine witnesses abroad.”***

From the above provision, it is not in doubt that the Senate is conferred with the powers to summon any person to appear before it to give evidence or to provide information, within its Constitutional and statutory mandate. The powers to summon by the Committees are equivalent to those of the High Court. The said provision is similar to Article 195 of the Constitution which grants the County Assemblies similar powers to summon. However, it is our finding that the power to summon cannot be exercised arbitrarily or capriciously. In the ruling delivered by Hon. Mumbi Ngugi J on 19<sup>th</sup> February, 2014 while determining the Chamber Summons application dated 17<sup>th</sup> February 2014 filed in this matter, the Learned Judge expressed herself thus;

***“While it (the Senate) does have the power under Article 125 to summon anyone, that power cannot have been intended to be exercised arbitrarily in isolation. Put differently, the provisions of Article 125 cannot be read in isolation, but it must be read in conjunction with other provisions of the Constitution which allocate the functions and powers to the various organs created by the Constitution”***

43. We associate ourselves fully with this finding. The powers to summon anyone under Article 125 can only be exercised by the Senate when it is properly seized of a matter in execution of its constitutional mandate. The summons should also be issued against persons who are reasonably expected to have relevant knowledge or information necessary to assist the Senate with matters under consideration. The question that therefore needs to be addressed is whether the Senate had the powers to summon the Governors and County Executive members for finance. It is on the above question, that counsels to the Petitioner addressed us extensively. According to Mr. Abdullahi and Mr. Wanyama, the Senate exceeded its mandate when it summoned the Governors or any County Executive Committee member of finance since these powers of oversight over County finances are accorded to County Assemblies under Article 226(2). That the Senate therefore arrogated to itself powers that had not been given to it by the Constitution.

44. We have considered the arguments by learned counsel and the various authorities referred to us. It is not in doubt that the County Assemblies are vested with oversight responsibilities with regard to public funds allocated to the counties. Of note are the provisions of Article 226(2) of the Constitution where Parliament is mandated to enact legislation that provides for ;

***“1) .....***

***2. The accounting officer of a national public entity is accountable to the National Assembly for its financial management, and the accounting officer of a county public entity is accountable to the county assembly for its financial management.”***

45. This Article is backed up by detailed provisions of the Public Financial Management Act of 2012 particularly under Part IV. The said part outlines the County Government responsibilities in public finances, including the establishment of County Treasuries and their responsibilities. The Act also includes the various roles and functions assigned to the County Executive Member of Finance and the County Accounting officers. Of particular importance is Section 148 of the Public Finance Management Act, 2012 which states as follows;

***“148. (1) A County Executive Committee member for finance shall, except as otherwise provided by law, in writing designate accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation.***

***(2) Except as otherwise stated in other legislation, the person responsible for the administration of a county government entity, shall be the accounting officer responsible for managing the finances of that entity.”***

46. Further to the above and in furtherance to Article 226(2) of the Constitution, Section 149 of the Public Finance Management Act of 2012 states as follows;

**“149. (1) An accounting officer is accountable to the county assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is—**

**(a) lawful and authorised; and**

**(b) effective, efficient, economical and transparent.”**

47. However, it is our considered view that these statutory provisions should not be considered in isolation but must also be interpreted in relation to Article 96(3) , Article 226(2) as well as other constitutional provisions. In Olum -vs- Attorney General of Uganda (2002) 2 EA 508, the Court of Appeal of Uganda held;

**“The entire Constitution has to be read as an integrated whole and no one particular provision destroying the other but each sustaining the other. Constitutional provisions must be construed as a whole in harmony with each other without insubordination of any one provision to the other.”**

This principle of harmonious interpretation of the Constitution was also discussed by the United States Supreme Court in the case of Smith Dakota -vs- North Carolina 192 v 268 (1940) where the Court held that;

**“It is an elementary rule of Constitutional construction that no one provision of the Constitution is to be segregated from the others and to be considered above but that all provisions bearing upon a particular subject are to be brought into view and to be interpreted as to effectuate the great purpose of the instrument.”**

48. We fully agree with the interpretation given by the courts in the authorities cited above regarding the harmonization principle of interpretation which means that a provision of the Constitution should be interpreted in harmony with the whole document of the Constitution and not in isolation. Each section of the Constitution should sustain and not destroy the other. We therefore find that Article 226(2) must be read together with Article 96 of the Constitution which as earlier stated provides for the roles of the Senate. Of particular importance is Article 96(3) which gives the Senate a central role in the fiscal matters of the County Governments concerning the allocation of National Revenue. The Constitution under that proviso goes further and states that the Senate has **“an oversight role over the National Revenue allocated to Counties”**. In our view, this provision is clear and requires no more than a literal interpretation.

49. Under Article 217, the Senate is accorded the powers to determine and allocate the National revenue to, and between, counties once every five years through a resolution. The Senate makes the initial decision through requesting and considering the recommendations of the Commission on Revenue Allocation taking into account the Constitutional principles outlined in Article 203 of the Constitution; considering public input, and inter alia the input of County Governors. The Senate’s decision is final unless two-thirds of the National Assembly reject or change the basis of allocation. How then, can the Senate exercise its oversight role in ensuring that the National revenue allocated to the counties is fully implemented in the County’s budgetary and expenditure plans? To our minds this is answered by Article 228 and 229 of the Constitution, together with Section 8(1) (c) of the Public Finance Management Act of 2012.

50. Article 228 provides for the Office of the Controller of Budget who oversees the implementation of budgets at both the National and County level. Article 228 (4) and (5) states as follows;

**“228 (4) The Controller of Budget shall oversee the implementation of the budgets of the national and county governments by authorizing withdrawals from public funds under Articles 204, 206 and 207.**

**(5).....**

**(6) Every four months, the Controller shall submit to each House of Parliament a report on the implementation of the budgets of the national and county governments.”**

51. Article 229 of the Constitution also provides for the office of the Auditor General, who audits the accounts of all public bodies, including the accounts of the National and County Governments. The Auditor General after auditing the respective accounts then reports on the findings of a particular financial year. Under Article 229 (7) and 229 (8) these audit reports must be submitted to Parliament or the relevant County Assembly, which shall then debate and consider the report within three months and take the appropriate action.

52. Further Section 8(1) (c) of the Public Financial Management Act of 2012 states that ;

**“8. (1) The Committee of the Senate established to deal with budgetary and financial matter's has responsibilities for the following matters, in addition to the functions set out in the Standing Orders;**

**(a).....**

**(b).....**

**(c) examine financial statements and other documents submitted to the Senate under Part IV of this Act, and make**

*recommendations to the Senate for improving the management of Government's public finances;.....”*

From a reading of the above provisions of the law, it is clear that the Senate is accorded tools to exercise its oversight function over expenditure of National revenue allocated to the County Governments which include receiving reports by the Controller of Budget and Auditor General. We therefore note that the office of the Controller of Budget and Auditor General are shared institutions at both the County and National level of Government whose role is to ensure that the two levels of Government operate within the principles of public finance stipulated under Article 201. Further, a committee of Senate is allowed to examine financial statements and other documents submitted to it pursuant to Part IV of the Public Finance Management Act of 2012 which deals with County Government responsibilities with regard to management and control of public finance.

53. However, for purposes of this judgment, we shall restrict ourselves to Article 228 and Section 8(1) (c) of the Public Finance Management Act of 2012, since it was the Petitioner's submission that the summons were prompted by the report of the Office of the Controller of Budget concerning the County Budget Implementation for the first quarter of the financial year 2013/2014 (hereinafter "the Report"). Indeed the summons from the Standing Committee on Finance, Commerce and Economic Affairs indicate that the Governors were to provide **"a written response to the issues raised by the Controller of Budget in the County Budget Implementation Review Report for the First Quarter of the Fiscal Year 2013/14"**. Further to this, the Senate requested for financial statements such as the Approved Budget Estimates for the fiscal year 2013/14 and Approved Supplementary Estimates for the Fiscal year 2013/14, which in our view are prepared pursuant to Part IV of the Public Finance Management Act of 2012.

54. It therefore follows that the Court must first address its mind to what the Report of the Controller of Budget entailed. Under Article 228(6) of the Constitution, the Controller of Budget is mandated to submit to each house of Parliament a report on the implementation of budgets of both the National and County Governments. This Court takes judicial notice of the fact that the Report gives a synopsis of the status of budget implementation and evaluates the performance of the County Governments in the management of public resources for a particular quarter in a financial year. We also note that the County Public resources include the National revenue allocated to each county together with the local revenue collected by each county.

55. The Controller of Budget further reports on how both revenues and budgetary allocations were implemented by the Counties. Reporting on budget implementation in our opinion creates awareness among stakeholders and assists oversight bodies in ensuring transparency and accountability in public finances at the county level. Consequently, we find that by virtue of Article 228(6) of the Constitution, the County Budget Implementation Review Report by the office of the Controller of budget was properly before the Senate. The Senate therefore had the mandate pursuant to Article 96(3) of the Constitution to examine and consider the same in so far as it related to utilization of revenue allocated to the respective Counties.

56. We also find that the Senate was entitled to examine and consider the Approved Budget Estimates for the fiscal year 2013/14 and Approved Supplementary Estimates for the Fiscal year 2013/14 from the requested County Governments by virtue of Section 8(1) (c) of the Public Finance Management Act and Article 96(3) of the Constitution, as the estimates would enable the Senate to examine and compare the same against the findings contained in the Report by the Controller of Budget regarding the implementation and expenditure of the funds allocated to each County out of the national revenue.

57. We therefore reject the argument by the Petitioner that the Senate's power is limited to oversight over National agencies which manage National revenue allocated to the counties such as the National Treasury. To our minds, this would be against the spirit and letter of Article 96(3) of the Constitution which vests a wide power on the Senate to oversee both the provision and expenditure of the national revenue allocated to the counties. In the foregoing, it is our determination that since the Senate was properly seized of the matters with regard to the issues raised by the Controller of Budget in the County Implementation Report, it had power to summon any person under Article 125 for purposes of giving evidence or providing information concerning the issues raised in that report.

58. However, we wish to point out that the first persons of contact with regard to any issue of financial management of a county would be the accounting officers appointed at the county level. We note that these officers are accountable to the County Assemblies by virtue of Article 226(2) of the Constitution and Section 149 of the Public Finance Management Act of 2012. Nevertheless, the Constitution provides for oversight of county public finances at two levels; by the County Assemblies at the county level and by the Senate at the National level. That is the Constitution and unless amended, this Court can only interpret it as it is. Moreover, the Constitution does not prohibit the Senate from summoning Accounting Officers and or County Executive members in performing its oversight functions under Article 96(3) of the Constitution. Logically, in exercise of its powers under Article 125 of the Constitution, the Senate is empowered to summon any person, including the accounting officers of the County Governments if such officers can provide information or evidence in relation to the National revenue allocated to a particular County.

59. We have also examined Section 30(3)(f), the County Governments Act of 2012 . The same states that the County Governor shall be accountable for the management and use of county resources. By implication, this provision means that the County Governor as the overall head of the county is accountable for the utilization of county resources including the National revenue allocated to his or her respective County. Since the accounting officers at the county are directly answerable to the County Assembly for the management of financial resources under the Public Finance Management Act 2012, who then is the Governor accountable to under Section 30(3)(f) ? In our considered view, since the County Governors are not answerable to the County Assembly in terms of fiscal management of the County resources under Section 149 of the Public Finance Management Act 2012, they must be held to account by the Senate for the National revenue allocated to their respective Counties in view of the provisions of Section 30(3)(f) of the County Governments Act, 2012 as read together with Article 10(2)(c) on the National values and principles of governance. The Governors being State Officers are bound by the national values of transparency, accountability and observance of good governance when performing their duties as the Chief Executive Officers of the County Governments.

60. It then follows that under Article 125, the County Governor and the County Assembly Member for finance who belong to the executive arm of the County Government can also be summoned by the Senate in exercise of their oversight mandate under Article 96(3) of the Constitution. Though the executive arm of the County Government is also answerable to the County Assemblies of their respective counties, this does not preclude the said arm from providing information to the Senate when called upon to do so in exercise of their oversight mandate

under Article 96(3). Further under Article 10(2) of the Constitution one of the values of governance enshrined in the Constitution is transparency and accountability. Every officer in every State organ and at both levels of Government must respect and comply with any mechanism of accountability established by the Constitution and the law to the fullest extent possible. The Court under Article 259 must therefore interpret the Constitution in a manner that promotes good governance through transparency and accountability. Put in another way, when persons in charge of the managing County finances are not held to account, the objectives of devolution set out under Article 174, which includes promoting democratic and accountable exercise of power; and to enhance checks and balances of powers, will be defeated.

61. The position advanced by the Petitioner that the County Governors cannot be summoned by the Senate by virtue of Article 226(2) of the Constitution, Section 148 of the Public Finance Management Act, 2012 and Section 30 of the County Government Act 2012 is therefore untenable. All Public Officers, including Governors must be accountable to the public for the utilization of resources under their care. It is our finding that the Senate, which is one of the State organs in which the people have delegated their sovereign powers to, in exercise of its oversight powers under Article 96(3) of the Constitution, has the powers to summon County Governors. Further, we hold that the Senate can also summon the County Executive Member for finance since such officers may also have information with regard to the issues raised by the Controller of Budget or any query with respect to how the national revenue allocated to a particular county has been utilized and implemented within the County budgets.

62. We must however mention that the Senate's oversight role cannot be likened to the role of the County Assembly under Article 226(2) of the Constitution. Under Article 96(3), the Senate's oversight role is restricted to the National revenue allocated to the counties. It has no oversight over grants, loans and revenue generated locally by the counties. Under Article 226(2) of the Constitution the County Assembly has a wide berth to oversee all the financial resources of the county including revenues allocated by the National Government and the revenue generated locally by the respective County. The Senate cannot therefore overreach its oversight mandate under Article 96(3) to any other aspect of County Government operations and resources as that is the sole preserve of the County Assemblies. To that extent, we find that the Senate and the County Assembly only have a collective role in the oversight of nationally allocated revenue to the Counties.

63. The Public Finance Management Act of 2012, which deals with the financial management of public funds for all public bodies at both the National and the County level, does not however provide for a mechanism on how both the Senate and the County Assemblies can exercise their oversight powers over National revenue allocated to the County governments in a manner that would avoid any jurisdictional overlaps. In our view, the Public Finance Management Act of 2012 should be amended to avoid duplication of roles and consequent inefficiencies with regard to the powers accorded to Senate under Article 96(3) and the powers of oversight accorded to the County Assemblies under Article 226(2) of the Constitution. It is our view that it is necessary to have a provision in the said Act to guide the Senate and the County Assemblies on how they should co-operate in the oversight of National revenue allocated to the County, while respecting the principle of separation of powers and in furtherance to Article 189 of the Constitution.

64. As the Supreme Court succinctly put it in the ***Supreme Court Advisory Opinion No. 2 of 2013 (supra)***

***“(146).....we categorically affirm that lawful public-agency conduct under Kenya’s Constitution, requires every State agent to grapple, in good faith, with assigned obligations, and with a clear commitment to inter-agency harmony and co-operation. No State agency, especially where it is represented by one person, should overlook the historical trajectory of the Constitution, which is clearly marked by transition from narrow platforms of idiosyncrasy or sheer might, to a scheme of progressive, accountable institutional interplays” (emphasis added)***

65. With regard to the issue raised by the Petitioner that the Senate was subjugating the county governments by summoning the Governors and the County Executive Member for finance, we find no merit to this argument. Though the Senate and County Assembly are on two levels of Government which are autonomous, the National Government, through the Senate under Article 96(3) is granted limited powers of oversight and supervision in county affairs in terms of financial management of the National revenue. However, since the oversight mandate granted to the Senate are powers that are constitutionally circumscribed and constrained, they do not subordinate the County Government to the National Government as contended by Mr. Abdullahi (SC). The oversight powers of Senate under Article 96(3) must therefore be exercised within the framework of co-operative Government as alluded to earlier in this judgment. If the Senate in exercise of its oversight powers over County finances is seen as an intrusion of the autonomy of County Governments, then this is an intrusion that is allowed by the People of Kenya when they enacted Article 96(3) of the Constitution and this court can only give effect to the Sovereign will of the Kenyan People.

66. In conclusion, we find that the Senate acted within its Constitutional mandate under Article 96(3) and Article 125 of the Constitution when it issued the summons dated 8<sup>th</sup> February, 2014 to the Governors and the County Assembly Members of finance of the respective counties with regard to the report by the Controller of Budget.

67. Having made this finding, we wish to make a few observations. As stated earlier Article 125 of the Constitution grants the Senate and the National Assembly and their respective Committees the power to summon any person to give evidence or provide information with regard to a matter they are seized of. This Constitutional power must be respected by all public officials at all times. However, it is the respectful view of this Court that when these powers are exercised in reference to members of the County Government, there must be a measure of restraint by the Senate. Put another way, when the Senate uses its powers to summon with regard to its oversight mandate under Article 96(3), it must not do so arbitrarily and capriciously. It must exercise caution and refrain from acting in a manner that could be construed as micro-managing devolved units at the county level. It must endeavor to sustain the spirit and letter of the Constitution as enshrined in Article 6(2) which states thus;

***“(2) The governments at the National and County levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.” (emphasis added)***

68. The Senate is therefore required by the Constitution under Article 6(2) when exercising its oversight powers over the County Governments under Article 96(3) of the Constitution to do so in a manner that fosters and nurtures the principles of devolution in the new Constitutional dispensation. We opine therefore that before resulting to summons, the Senate should have sought consultations or mediation

with the respective County Governors with regard to the concerns raised by the Controller of Budget's report issued with deference to implementation of County budgets. In order to promote harmonious co-existence between the Senate and the County Governments for the sake of harnessing the fruits of devolution for the benefit of the people of Kenya, the Senate should only issue summons to Governors or other Officers of the County Government as a matter of last resort where it is clear that the County Governors and other County Officials have declined an invitation by the Senate or its Committee(s) to answer to matters of oversight of County Funds. The Senate should endeavor to improve accountability at the County level and not cripple the County Governments.

69. We also wish to advise that in future, the various levels of Governments should utilize Article 189(3) and (4) of the Constitution when resolving any disputes between them. The same states as follows;

***“(3) In any dispute between governments the governments shall make every reasonable effort to settle the dispute, including by means of procedure provided under National Legislation.***

***(4) National Legislation shall provide procedures for settling Intergovernmental disputes by alternative dispute resolution mechanism including negotiation, mediation and arbitration.”***

The National Legislation referred to under subsection (4) above is the Inter-governmental Relations Act 2012 which provides as follows under section 31:

***“The National and County Governments shall take reasonable means to;***

***a. resolve disputes amicably and***

***b. apply and exhaust the mechanisms for alternative dispute resolutions provided under the Act or any other Legislation before resorting to judicial proceedings as contemplated by Article 189(3) and (4) of the Constitution” (emphasis added)***

70. Though the existence of this alternative dispute resolution mechanisms provided for use by the different levels of Governments does not necessarily oust the jurisdiction of the Court, we find that pertinent political questions between the two levels of Government should be resolved in a manner that does not result in acrimony and hostility. The Supreme Court had an opportunity to duly address the issue of alternative dispute resolution between the different houses of parliament in Supreme Court Advisory Opinion No. 2 of 2013 (supra) where it expressed itself as follows;

***“[145] It is clear to us, from a broad purposive view of the Constitution, that the intent of the drafters, as regards the exercise of legislative powers, was that any disagreement as to the nature of a Bill should be harmoniously settled through mediation. An obligation is thus placed on the two Speakers, where they cannot agree between themselves, to engage the mediation mechanism. They would each be required each to appoint an equal number of members, who would deliberate upon the question, and file their report within a specified period of time. It is also possible for the two Chambers to establish a standing mediation committee, to deliberate upon and to resolve any disputes regarding the path of legislation to be adopted for different subject-matter.***

***[146] Had such an approach to the dispute been adopted, it is our opinion, this Court would probably not have been asked to give an Advisory Opinion, as a fitting solution would most likely have been found. What precipitated the current situation, as is clear from the facts, is the National Assembly Speaker's non-recourse to the provisions of Articles 110(3), 12 and 113 of the Constitution, thus improperly excluding the prospects of consultation and mediation. Such a course of action is precisely what Archibald Cox had in mind: “If one arm of government cannot or will not solve an insistent problem, the pressure falls upon another.” The pressure now falls on the Supreme Court.” (emphasis added)***

71. Further in the case of Ex parte President of South Africa: in re Constitutionality of the liquor Bill 2000 (Liquor Bill Case) 2000(1) BCLR 1 the South African Constitutional Court held thus;

***“(40).....Chapter 3 of the Constitution ‘introduced a “new philosophy” to the Constitution, namely that of cooperative government and its attendant obligations. In terms of that philosophy, all spheres of Government are obliged in terms of sections 40(2) to observe and adhere to the principles of cooperative Government set out in Chapter 3 of the Constitution.”***

72. We associate ourselves fully with the findings of the Courts in the cases cited above. The Senate which is one of the organs of the National Government and County Governments need to co-operate and engage on a platform of mutual relations and consultation as opposed to engaging in adversarial relations with regard to any matter touching on devolution. The Courts should therefore be used as a last point of call with respect to any dispute concerning the functional areas of any State organ under the new Constitutional dispensation.

73. We are aware that this case has generated substantial public interest with regard to the Courts role in arbitrating the apparent conflict between the County Governments and the Senate. We take judicial notice of the fact that various threats have been issued against the Judiciary, some of its members and County Governments including a proposal that the Division of Revenue Bill should not be passed since the Governors do not wish to be held accountable. Not only will this be contrary to the Constitution, but such a stance will unfortunately lead to tragic consequences as the County Governments will be deprived of national revenue which is the antithesis of devolution. The same would also be contrary to the spirit of Article 10 on the National values and principles and Article 6 of the Constitution. We therefore urge both the Senate and County Governments through the Governors, to foster dialogue and co-operate in the interest of the counties they represent and swore to protect while taking their oath of office. They are all servants of the people; elected by the people to promote their interests and should embrace servant leadership. Superiority contests will only kill rather than promote devolution.

**Whether the Petitioner is entitled to the Reliefs Sought**

74. After carefully considering the Petition and also reviewing the oral submissions, including the authorities cited, we hereby grant the order sought as follows;

1. We issue a declaration that resonating the intention of Articles 2,3, 10 and within the intendment of Articles 159(1), 160(1) and 259 of the Constitution of Kenya if the Constitution makes provisions as to how the legislature should conduct its internal affairs or as to the mode of the exercise of its legislative powers, a court of law can exercise its jurisdiction to ensure the legislature complies with the constitutional requirement.

2. We hold that the Senate can summon Governors, County Executive Members of Finance and County accounting officers to appear before it and answer to questions on County Government finances in so far as the National revenue allocated to the respective county is concerned, but such power should not be exercised in an arbitrary and capricious manner.

3. We hold that the Senate's power of oversight under Article 96(3) is limited to National revenue allocated to the County Governments.

4. With regard to the various injunctions sought, we recognize that the Court can only issue the permanent injunctions against the Senate if it was demonstrated by the Petitioner that the Senate abused its parliamentary process and also issued summons to achieve ulterior political motives. In our view the Petitioner did not demonstrate this. The Court therefore declines to issue the permanent injunctions sought by the Petitioners in prayer number (vii), (viii) and (ix) of the Petition.

5. Let this judgment be brought to the immediate attention of the Attorney-General for necessary action.

6. With regard to costs, we note that costs follow the event, and are also at the discretion of the Court. The Petition that has been brought is on a matter of public interest. In the foregoing we shall make no orders as to costs.

75. In conclusion, we must commend the advocates appearing in this Petition, Mr. Abdullahi and Mr. Wanyama for their extensively researched presentation. If we have not referred to all the authorities referred to, it is not because they were not enlightening in the determination of this case. We are also grateful to our Research Assistants for their dedication and research in all the issues forming the subject of this Judgment.

76. Orders accordingly.

**DATED, SIGNED AND DELIVERED THIS 16<sup>TH</sup> DAY OF APRIL 2014.**

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|---------------------|--------------------|------------------|
| <b>H.I. ONG'UDI</b> | <b>C.W. GITHUA</b> | <b>B.N. OLAO</b> |
| <b>JUDGE</b>        | <b>JUDGE</b>       | <b>JUDGE</b>     |
| <b>16/4/2014</b>    | <b>16/4/2014</b>   | <b>16/4/2014</b> |