



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Misc Civil Appli. 113 of 2008**

**IN THE MATTER OF AN APPLICATION BY, ABDIRAHMAN  
MOHAMMED ABDILLE & 23 OTHERS FOR LEAVE TO APPLY FOR AN ORDER OF  
PROHIBITION AND MANDAMUS**

**AND**

**IN THE MATTER OF THE CONSTITUENCY DEVELOPMENT FUND ACT NO10 OF 2003**

**BETWEEN**

**REPUBLIC..... APPLICANTS**

**VERSUS**

- 1) HON ABDIRAHMAN ALI HASSAN - PATRON
- 2) MR GALGALO - DISTRICT OFFICER - (MEMBER)
- 3) CLLR OSMAN MATHOBE - MEMBER
- 4) CLLR IBRAHIM ABUKAR - MEMBER
- 5) HARET MOHAMMED ALLI - TREASURER
- 6) MOHAMUD SHSIKHNOOR - MEMBER
- 7) ABDULLAHI ABDI HIRSI - MEMBER
- 8) MOHAMUD SALAT - MEMBER
- 9) SHEIKH ABDISALAN SHEIKH MOHAMED - MEMBER
- 10) SHEIKH MHAMED ABDI NOOR - MEMBER
- 11) HARED HASSEIN - MEMBER

**12) SALADO KHALIF - MEMBER**

**13) MOHAMED MOHAMUD SAID - MEMBER**

**14) NOOR OTHOWA BAROQUATLE - MEMBER**

**15) ABDI NUR ELIM - MEMBER**

**RULING**

The application before me is dated 2<sup>nd</sup> April 2008. It seeks various judicial review orders.

According to the Court file leave to file the application was given by my sister, Lady Justice Wendoh on 20<sup>th</sup> March 2008. On 19<sup>th</sup> March 2008 the Applicants had been asked by the Court to file a separate application under the vacation rules. On the same day the Applicant filed a notice of withdrawal of the Chamber Summons seeking leave dated 19<sup>th</sup> March 2008.

Preliminary Objections to the Notice of Motion was filed on 16<sup>th</sup> April 2008 and it raises several grounds, the principal ones being:-

- (i) Complaints concerning CDF matters should be raised with Board which has the capacity of suing and being sued pursuant to section 5(1) of the Constituencies Development Fund Act.
- (ii) The Applicants have failed to follow the procedure set out in s 52 of the Constituency Development Fund Act which reads as under:
  - (1) "All complaints shall be forwarded to the Board.
  - (2) Disputes shall be referred to the Board in the first instance and where necessary an arbitration Board shall be appointed by the Minister who shall consider and determine the matter before the same is referred to Court.
  - (3) Subject to this Act, no person in the management of the Funds shall be held personally liable for any lawful action taken in his official capacity or for any disputes against the Fund."

This application stands dismissed on the following grounds:

- (1) The chamber application for leave having been withdrawn it went together with the Statement and Verifying Affidavit. The Statement is the main pleading in judicial review and therefore the Notice of Motion is hollow and cannot survive on its own.
- (2) The application violates the statutory dispute resolution provisions of the Act and it has not been demonstrated that the dispute resolution process outlined in the CDF Act is less beneficial or less effectual to judicial review.

I accordingly strike down the application dated 2<sup>nd</sup> April 2008 with costs to the respondents and Interested Party.

DATED and delivered at Nairobi this 6<sup>th</sup> day of June, 2008.

**J.G. NYAMU**

**JUDGE**