REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Misc Appli 606 of 2006

REPUBLIC ……..APPLICANT

Versus

THE CONTROLLER AND AUDITOR GENERAL …..……...RESPONDENT

EXPARTE

COMPUTER APPLICATIONS LIMITED

SYSTEM INTEGRATION LIMITED (SYMPHONY)

JUDGMENT

By the Notice of Motion dated 3rd November 2006, the ex parte Applicant, Computer Applications Ltd. hereinafter referred to as '**CAL'** and System Integration Ltd, (Syphony) seek orders of mandamus against the Controller and Auditor General of the Republic of Kenya

Respondent herein.

The prayers sought are as follows:-

1. An order of mandamus directed at the Respondent, the Controller and Auditor General to compel the Respondent to explicitly verify, confirm, or otherwise authenticate the evidence adduced by CAL and the Ministry of Finance before the Public Accounts Committee, (herein after Referred to as PAC) of 17th May 1999, (PAC Report for 1995/96);

2. An order of mandamus directed to the Respondent to compel the Respondent to carry out verification and confirmation that the Customs and Excise Computerization project was completed and implemented to the full satisfaction of the Government of the Republic of Kenya and in all aspects in accordance with the contract agreement of 10th March 1989;

3. An order of mandamus directed at the Respondent compelling the Respondent to verify and confirm that the Government of Kenya Budgetary Expenditure and Control System and the System for the

Department of Motor Vehicles have been satisfactorily completed and implemented by CAL;

4. An order of mandamus compelling the Respondent to carry out this statutory and public duty so that the Respondent can explicitly verify, confirm and certify to the PAC that;

(i) Payment of 50% contract sum and subsequent additional payments to CAL was approved by the Treasury;

(ii) That the said payment was in accordance with the contract agreement dated 10th March 1989 between CAL and the Government of the Republic of Kenya;

(iii) That all hardware and software relating to the said contract were delivered and installed by CAL (except those items the Custom and Excise Department specifically decided should not be installed);

(iv) That the relevant acceptance certificate and other documents were submitted to the Controller & Auditor General;

(v) That the project was therefore fully implemented in all aspects in accordance with the terms of the contract agreement dated 10th March 1989.

5. An order of mandamus compelling the Respondent to formally confirm and or verify to the PAC on the authenticity of the evidence adduced before the PAC that the works emanating from the contract agreement of 10th March 1989 were properly, satisfactorily, completed and implemented by CAL;

6. The costs of the Application be borne by the Respondent.

The Application is premised on grounds found in the statement dated 16th October 2006, a Verifying Affidavit sworn by Mike Eldon, the Executive Director of the Applicant, dated 6th October 2006 and Skeleton arguments filed in court on 11th April 2007. The Applicant's Counsel was Mr. Miller.

The Application was opposed and Agnes Chiwo Mita, a Deputy Director of Audit with the Kenya National Audit Office swore an Affidavit dated 18th July 2007, in reply and Mr. Muiruri , Litigation Counsel from the Attorney General's Office also filed written submissions.

A brief background of this case is that on 10th March 1989 a formal contract was signed between the 1st Applicant, CAL and the Government of the Republic of Kenya, for computerization of the Customs and Excise Department of the Ministry of Finance. The contract was exhibited as ME 2. Such projects had been earlier undertaken by CAL in other Ministries. In total CAL was paid about Kshs.55 million. The Parliamentary Public Accounts Committee in its report of 1993/4, (Exhibit ME 3) raised queries regarding three computerization projects in respect of the contract of 10th March 1989. PAC then placed a ban on CAL & Syphony among other companies under the directorship of Mr. Da Gama Rose, banning them from involvement in Government contracts. The ban affected all the Da Gama Rose Group of Companies Ltd. listed as EX ME 4. That ban remains to date: On 17th May 1999, the PAC in its report of 1995/6 found that the projects and particularly the Customs & Excise project had been implemented to the satisfaction of the Government of the Republic of Kenya and the PAC recommended that the ban on CAL be lifted, subject to verification of the evidence and confirmation of the Controller and Auditor General, ME 6, is a copy of the the PAC Report at Paragraph (x). That a further report of the PAC of 1998/1999 recommended that CAL deliver the software Application or it would be banned from any Government contract. That in the PAC report of 2002/03, it was agreed that the project was completed after 12 years due to delays on both parties and on 3rd December 2003 the Commissioner General, Kenya Revenue Authority, wrote to the Financial Secretary, Ministry of Finance that CAL had completed the project in all respects in accordance with the terms of the contract and the project should be considered to be complete and fully implemented and should be wound up, (Ex ME 7). It is then the Permanent Secretary Treasury wrote to Controller & Auditor General confirming the completion of the contract (Ex

ME 8). That the Respondent referred the matter back to the PAC by his letter of 7th January 2004 instead of confirming to the PAC that the project was complete. Thereafter, CAL has made several requests to the Respondent to act on the recommendations by PAC to verify and confirm evidence of completion of the contract but the Respondent has declined to do so. (Demand letters ME 10). It is the Applicant's contention that the Respondent has a statutory duty to verify and confirm the performance of the contract and failure to do so has occasioned the Applicants loss of business (ME 11) and that even other contracts which were entered into were cancelled due to the ban, for example a contract with Central Bank (Ex ME 12 & 13) was cancelled due to the continued ban. The Applicants then served a demand on the Respondent with notice of intention to sue (ME 17) but the demand notice elicited no response and it necessitated this Application.

Mr. Miller further submitted that despite the provisions of S. 105(5) of the Constitution which provide that the Controller and Auditor General shall not be subject to the direction or control of any other person or authority, yet he is subject to the supervisory powers of the court under S.123(8) of the Constitution and the court has the jurisdiction to intervene. That although S.105(5) implies that the PAC cannot give directions to the Controller & Auditor General, yet in the exercise of his powers, the Respondent reports to the PAC and makes recommendations. That the office of the Respondent is part of the Government and that office cannot be separated from the PAC. That the Respondent has subjected itself to the PAC and the Respondent should therefore invoke it's necessary machinery which is at no axtra cost, to ensure the ban is lifted. Counsel relied on;

1) **Halsbury's Laws of England** (4th Ed) Vol 1 page 111 per 89 which defines the nature of the order of mandamus, its scope & efficacy.

2) DIDA BONAYA HALAKE V NRB CITY COUNCIL CA 27/10 in which the court considered when an order of mandamus can issue.

In her Affidavit in reply, Agnes Chiwo deponed that the Applicant has not identified in precise terms the public duty which the Respondent is alleged to have neglected nor have they referred to any specific provisions of the law that have been offended, and that therefore these proceedings are frivolous, misconceived, vexatious and an abuse of the court process. That the ban that was slapped on the Applicants by the PAC Report of 1993-1994, was also addressed in the 1995/1996 and 1997/1998 PAC Reports and the ban was sustained (ACM 1). That the Respondent continues to audit the issue of computerization arising from the PAC Reports as per Ex ACM 2 (a) & (b) as required of the Respondent by the law.

Mr. Muiruri opened his submissions by posing three pertinent questions;

(1) who imposed the ban on the Applicants?

(2) who then, can lift the ban?

(3) what is the relationship between the Respondents, PAC, Permanent Secretary Treasury and the National Assembly?

Mr. Muiruri agreed with the summary of the facts that the contract entered into between CAL and the Government became the subject of deliberations of the PAC and in its 1993-94 Report, recommended to the National Assembly that the Applicant be banned from entering into any contracts with the Government till verification was obtained from the Respondent. Counsel took the court through the various provisions of law that establish the office of the Respondent and its duties and responsibilities, the PAC and its powers and how they relate with the Permanent Secretary Treasury, the Minister of Finance & Parliament. Counsel submitted that S.2 of the Exchequer and Audit Act defines the PAC to mean a select Committee of the National Assembly designated by that name. On the other hand, the Respondent is established under S.105 (1) of the Constitution with its duties specified under S.105 (2) to (4). And Section 46 of the Public Audit Act, 2003 then underpins the provisions of S.105 (5) of the Constitution. The Public Audit Act also spells out other duties of the Respondent in more detail at

Sections 8 to 10 of that Act. Ss. 4 to 7 the Public Audit Act imposes a duty on the Permanent Secretaries in the respective Ministries to submit annual accounting Reports of funds expended from funds voted from the Consolidated Fund to be submitted to the Respondent and the Respondent is then required to audit the accounts and make an opinion thereon. That Under S.9, the Respondent has to prepare a report and submit it to the Minister of Finance and that under S.10, the Minister has a duty to lay the report before the National Assembly and it is only when the Minister fails to submit the Report to the National Assembly that the Respondent will do so.

That the Permanent Secretary, Treasury is the accounting officer. That the Respondent conducts an independent evaluation of the Reports and reports to the National Assembly through the Minister which report is in turn passed on to the PAC for its consideration and the PAC reports back to the National Assembly and that it is upon the National Assembly to take the views, and recommendations of the PAC and refer them to the Minister for Finance for implementation. That sometimes the Respondent may sit in the PAC for advisory purposes.

Mr. Muiruri urged that the 1995-96 (Ex 6) report is made to the National Assembly and it was upto the house to take action and the Minister is the one who is accountable. Counsel said that the said practice is to maintain the doctrine of separation of powers – between the Respondent and the Ministry being audited.

That regarding the PAC report of 1997-98, (ACM 1 annexture to Agnes Chiwo's Affidavit) the Applicant's contract was considered and the ban was to continue if the Applicants did not deliver the software Application to the Government,. That the PAC took cognizance of the Respondents report and that therefore the Respondent had discharged his constitutional duty.

That in respect of the 1998 to 1999 PAC Report, the Respondent gave his opinion on computerization by the Applicants in his report (Ex 2 b to the Respondents Affidavit). In the 2002/2003 PAC Report, the Respondent revisited the issue of computerization by the Applicants and in his letter of 7th January 2004 to the Permanent Secretary Treasury, the Respondent indicated that it is Parliament who blacklisted the Applicants and that the issue should be referred back to PAC so that it could make its decision on the ban. That even when the Applicants requested the Respondent to lift the ban, the Respondent denied having authority to do so (see letter of 4/5/05 to Applicants from Respondent) but said that it was Parliament through the PAC to act.

It is Respondents contention that the Applicants have not defined which duties the Respondent failed to perform nor was any Section or provision of the law cited as having been infringed. That the Respondent has demonstrated that it is Parliament to reconsider the ban and yet the said National Assembly is not a party to these proceedings. That because of the provisions of S.105(5) of the Constitution, the PAC cannot direct or control the Respondent in regard to performance of its duties. That as a result, none of the orders sought can issue and that the conduct of the Respondent has not come into question in order to invoke S. 123(8) of the Constitution.

Having heard both parties' submissions, and having considered the Statement, Affidavits and all the annextures thereto, we think that the three questions raised by the Respondents are the issues that we should deal with and ultimately make our findings on whether or not the orders sought can issue.

In our view, the first question as to who imposed the ban on the Applicants is not disputed and is already answered. The contract entered into on 10th March 1989 between the 1st Applicant and the Government (Ex ME 2) involved computerization projects in the Customs & Excise Department of the Ministry of Finance.

The PAC report of 1993-4 (Ex ME 3) raised queries on the performance of the project and at page 177, paragraph 380, of the report, recommended as follows: "**The Committee therefore recommends that-**

(i) ……..

(ii) ……...

(iii) All items are procured through open tender and that Computer Applications Ltd. And all other Companies under the Directorship of Mr. Da Gama Rose be excluded from any future Government tenders."

The issue was revisited in subsequent Reports of the PAC. In the 1995-6 Report, ME 6, page (x) Paragraph (x) it was recommended as follows; "…….**..In view of the fact that the project has been implemented to the satisfaction of Government, the committee recommends that, subject to the verification and confirmation of the above evidence by the Controller and Auditor General, the previous recommendations barring CAL, and other companies under the directorship of Mr. Da Gama Rose from future Government contracts be lifted forthwith."**

Despite the above recommendation that the ban be lifted, in the 1997-1998 the PAC Report at page 32 paragraph 57, included a further condition that reads;

"**The Committee therefore recommends that the Accounting Officer should:**

(i) …….

(ii) ……..

(iii) Ensure that until CAL and its associates deliver the software Application, it should be barred from any Government Contract."

It means that the recommendation of 1995-6 that the ban be lifted was made conditional by this subsequent recommendation and the latter recommendation superseded the 1995/1996 recommendation. We did note that the Applicant had omitted to refer to this PAC Report that had imposed a further condition on the lifting of the ban. To date the ban is still in place because it is the genesis of this Application. The ban was imposed by the PAC in its 1993-1994 Report.

To answer the 2nd question raised by the Respondent we think that it is necessary to consider the 3rd question regarding the relationship between the different offices and persons named first because that will lead us to who then should lift the ban.

What is the PAC in relation to the National Assembly, the Respondent and the Ministry of Finance? Under S.2 of the Exchequer and Audit Act, Cap 412 Laws of Kenya, the PAC is described as follows "**Public Accounts Committee" means the select committee of the National Assembly designated by that name."**

The standing orders of the National Assembly, at part XIX provides for the various select committees of the House and their functions. Paragraph 147 provides for the composition and functions of the Public Accounts Committee. It stipulates;

"**147 (1) there shall be a select committee to be designated the Public Accounts Committee for the examination of the accounts showing the appropriation of the sum voted by the House to meet the public expenditure and of such other accounts laid before the House as the Committee may think fit. The Public Accounts Committee shall consist of a chairman who shall be a member who does not belong to the Parliamentary Party which is the ruling party and not more than ten members who shall be nominated by the House Business Committee to reflect the relative majorities of the seats held by each of the parliamentary party in the National Assembly, at the commencement of every session;**

Provided that the ruling party shall have a majority of not more than two."

The Office of the Controller and Auditor General is a creature of S.105 of the Constitution and is

underpinned by S 46 of the Public Audit Act. In addition, Ss 8 to 10, Ss.34 to 47 of the Public Audit Act 2003 provide for that office, and they specify the Controller's functions. Section 105 of the Constitution stipulates as follows:

"**105 (1) There shall be a Controller and Auditor General whose Office shall be an office in the public service.**

(2) It shall be the duty of the Controller and Auditor General -

(a) to satisfy himself that any proposed withdrawal from the consolidated fund is authorized by law, and if so satisfied, to approve the withdrawal;

(b) To satisfy himself that all moneys that have been appropriated by Parliament and disbursed have been applied to the purposes to which they have been so appropriated and that the expenditure conforms to the authority that governs it; and

(c) At least once in every year to audit and report on the public accounts of the Government of Kenya, the accounts of all officers and authorities of that Government, the accounts of all courts in Kenya (other than courts no part of the expenses of which are defrayed directly out of the money provided by Parliament), the accounts of every commission established by this constitution and the accounts of the Clerk of the National Assembly.

(3) The Controller & Auditor General and any officer authorized by him shall have access to the books, records, returns, reports and other documents which in his opinion relate to any of the accounts referred to in Subsection (2);

(4) The Controller and Auditor General shall submit every report made by him in pursuance of subsection (2) to the Minister for the time being responsible for finance who shall, not later than seven days after the National Assembly first meets after he has received the report, lay it before the Assembly;

(5) In the exercise of the functions under Subsection (2), (3) and (4) the Controller and Auditor General shall not be subject to the direction or control of any other person or authority."

Other duties of the Controller & Auditor General are specified under S.36 of the Public Audit Act which reads as follows;

"**36 in addition to his duties under the Constitution and any other duties under this Act, it shall be the duty of the Controller & Auditor General to satisfy himself –**

(a) That all reasonable precautions have been taken to safeguard

(i) The collection of Revenue; and

(ii) The receipt, custody, issue and proper use of property;

(b) That the applicable law has been complied with in relation to;

(i) The collection of revenue; and

(ii) The receipt, custody, issue and proper use of property; and

(c) That all money, other than money that has been appropriated by Parliament, has been dealt with in accordance with the proper authority."

S. 37 of the Public Audit Act supplements S.105,(3) of the Constitution and gives powers to the

Controller and Auditor General to access and examine documents, have access to books, reports including electronic documents, access to any Government property, and require any Government employee who is subject to an audit to be examined or provide information and may cause a search in public offices or records.

The other duties of the Respondent are set out in more detail at Section 8 to 10 of the Public Audit Act which Mr. Muiruri carefully took the court through. These provisions show the link between the Respondent, the Permanent Secretary and the National Assembly.

Under Sections 3 to 7, of Public Audit Act, the Treasury, (Section 3) other Accounting officers (S 4), Receivers of Revenue Accounts (S 5) Administrators of public funds (S 6) impose a duty on the accounting officers (the P.Ss) of the respective Ministries to submit annual accounting reports of funds expended from the Consolidated Fund to the Respondent under S. 8 of the Public Audit Act for audit. Thereafter, the Controller and Auditor General prepares his report under S.9 and submits it to the Minister for Finance. The Minister in turn lays the reports before the National Assembly under S.10 (2) of the Public Audit Act.

It is only if the Minister fails to submit the report to the National Assembly that the Controller and Auditor General will submit a copy to the Speaker to lay it before the House. Once the independent Reports of the Respondents are presented to the National Assembly, the PAC considers the reports, makes recommendations and views to the House, which discusses it, makes its recommendations and views and then the same is given back to the Minister for implementation. The applicants have not disputed this process set out in Public Audit Act to be the law and correct practice relating to the Respondent's duties and the relation with the PAC. The Controller and Auditor General can be generally described as the overseer of collection of Government Revenue, and appropriation of all public monies and ensures proper use of Government property.

In relation to the ban against the Applicants, in the 1997-8 PAC Report, the Respondent made recommendations in his report (ACM 2a) of the same year at paragraph 55 where he addressed the issue of computerization of the Customs & Exercise Department pursuant to the 1989 contract, which in his view had been unsatisfactorily handled. In his 2002-3 report, the Respondent again revisited the issue of computerization of the Customs & Excise Department at paragraph 42, to 49 under the heading of **COMPUTERISATION OF GOVERNMENT DEPARTMENTS.** The contents of paragraphs 42-49 of the 2002-3 report are the same as those captured in the letter dated 7th January 2004 from the Respondent to the Permanent Secretary Treasury in which the Respondent confirmed having certified and reviewed the contract between the Applicants and the Customs & Excise Department. In preparing the said reports, the Respondent was performing his statutory duties specified under Ss. 8-10 of the Public Audit Act and the Constitution.

Who should lift the ban, the Respondent or PAC? In his letter of 7th January 2004 to the Permanent Secretary Treasury (Ex ME 9) the Respondent observed that it is the PAC which blacklisted the Applicants and that the matter should be sent back to PAC for it to take action. In reply to the Applicants' letter, the Respondent on 4th May 2005, wrote back to the Applicant indicating that he had no authority to lift the ban but that it is Parliament through the PAC which had the authority to do so. The Respondent has maintained that it is Parliament to lift the ban. We do agree with the Respondents case that, so far, the Applicants have not pointed to any provision of law that was breached by the Respondent either in the Constitution, the Public Audit Act or the Exchequer Act any duty imposed by the various statutes upon the Respondent which the Respondent has failed to perform that there would be need to compel him by an order of mandamus.

The Applicants rely on the fact that the PAC report of 1995-6, recommended a lifting of the ban subject to verification and confirmation by the Respondent that the contract was satisfactorily performed and that is the public duty that the Respondent should have performed.

From a reading of S. 8-9 of the Public Audit Act, even if the Respondent verified the contract, all that the Respondent could have done is prepare a report with his views and recommendations and pass the report

to the Minister who would then place it before PAC for their review and action or pass it to the PAC or if the Minister failed to pass it to the House.

In any event, would the PAC which is a committee of Parliament direct the Respondent on what to do? S.105 (5) of the Constitution provides that in the performance of his functions the Respondent will not be subject to the direction or authority of anybody else. That Section is underpinned by S.46 of the Public Audit Act which provides as follows:-

"**In addition to the protection given by S. 105 (5) of the Constitution, the Controller and Auditor General shall not be subject to the direction or control of any other person or authority in carrying out any functions under this Act to which that Section of the Constitution does not apply."**

The applicants can only challenge the authority of the Respondent under S.123 (8) of the Constitution where the Applicants can demonstrate that the Respondent has breached Constitutional or statutory provisions or by his conduct has acted in bad faith capriciously, or oppressively. Such an allegation would be made under the Constitutional provisions but not by way of Judicial Review. No such allegations have been made nor is there a Constitutional Application before us.

From an examination of the functions of the Respondent under the various provisions of law considered above, we are satisfied that the Respondent cannot be subject to the direction or authority of the PAC which is a Committee of Parliament. If the Controller and Auditor General were to take over the mandate of the PAC or Parliament it would be infringing on the doctrine of separation of powers. However, we know that the doctrine of separation of powers is never absolute as it entails co-ordination, inter dependence and co existence of the three arms of Government to enhance efficiency, effectiveness and good governance. That explains the relationship between the PAC and the Controller and Auditor General and why the Controller and Auditor General may to a limited extent play an advisory role to the PAC but it is the PAC or Parliament to decide on the fate of the ban imposed on the Applicants and make appropriate recommendations to the Minister for Finance who in turn, in liaison with the Permanent Secretary Ministry of Finance, will act on the recommendations to lift the ban.

Are the Applicants entitled to the orders of mandamus?

Mandamus is a remedy in Judicial Review. Judicial Review orders are discretionary in nature and are concerned not with the merits of a decision but a review of the decision making process itself. It was the Applicants view that the issue herein is whether the contract of 1989 was satisfactorily performed and that the PAC Report of 1995/6 found that to be a fact. On the contrary, we find that the PAC Report of 1997/8 superseded that earlier recommendation and pegged the lifting of the ban on delivery of the Software Application by the Applicants. What we are saying is that contrary to what the Applicant was submitting that mandamus should issue because the contract was satisfactorily performed, that is not what this court would consider in granting an order of mandamus. The Applicant cited the cases of **AMIRJI SINGH V THE BOARD OF POST GRADUATE STUDIES KENYATTA UNIVERSITY MISC CR 144/1995** and (2) **DIDA BONAYA HALAKE V NAIROBI CITY COUNCIL (CA 27/01).**

In both cases the Court of Appeal and High Court considered the scope and efficacy of an order of mandamus. In the **AMIRJI SINGH CASE,** the court cited the **HALSBURYS LAWS OF ENGLAND 4TH ED VOL 1** at page 111 paragraph 89 which states as follows:-

"**The order of mandamus is of a most extensive remedial nature; and is in form of a command issuing from the High Court of Justice directed to any person, corporation or inferior tribunal requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly, it will issue, to the end that justice may be done, in all cases where there is a specific legal right, and it may issue in cases where although there is no alternative remedy, yet that mode of redress is less convenient, beneficial and effectual."**

At paragraph 90, headed 'mandate' it is stated

"**The order must command no more than the party against whom the Application is made is legally bound to perform. Where a general duty is imposed a mandamus cannot require it to be done at once. Where a statute which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, mandamus cannot command the duty in question to be carried out in a specific way."**

It is true that the Applicants may have suffered substantial financial loss due to the ban that was imposed on them in 1993-4 by the PAC but it was upto them to show the statutory duty imposed on the Respondent which he had failed or ignored to perform that he should be compelled by an order of mandamus. As earlier observed, we find that the Applicants have not pointed to any provision or statute imposing any duty on the Respondent to lift the ban and an order of mandamus cannot issue.

Another reason why we cannot grant the orders as prayed is that the National Assembly whose report and decision is in issue has not been enjoined to these proceedings as a party. The ban against the Applicants was made by the PAC. We have found that it is the Parliament through the PAC that should have lifted the ban. The correct party has not been brought before this court and the orders sought would not issue even if they were deserved. In fact the mere fact that the Applicant sought to have the ban imposed by the PAC lifted, the National Assembly should have been made an interested party in the matter. In addition to the PAC, we are of the view that the Permanent Secretary Treasury, who is the accounting officer in the Ministry of Finance, and the Minister for Finance who would be the ones to take the actual action on the recommendations of the PAC, should have been enjoined to these proceedings as they are interested parties in the matter. Order 53 Rule 3 (2) Civil Procedure Rules requires that the Notice of Motion be served on all persons that may be directly affected by the court order arising from such proceedings and an Affidavit of Service showing service on the parties be filed in court pursuant to Order 53 Rule 3(3) Civil Procedure Rules. Failure to serve any Interested Party should have been explained to the court at the hearing of the motion. Those provisions have not been complied with and that renders the Notice of Motion Application fatally defective.

Lastly, the PAC is designated to examine the accounts of the appropriation of the sums voted by the House to meet the public expenditure and any other account that may be laid before it. Its work is to maintain checks and balances as regards the Executive Arm of Government. Judicial Review orders cannot issue against a recommendation by the PAC so as to interfere with its mandate to check on the Executive. In the case of **R V INLAND REVENUE COMMISSIONERS ex parte NATIONAL FEDERATION OF SELF EMPLOYED AND SMALL BUSINESSES LTD (1982) AC 617,** the court observed that the court cannot interfere in functions of parliament as regards efficiency and policy but if an unlawful act is committed, then the court could intervene. While the Applicant might have a case based on legitimate expectation to have the ban lifted, the Applicant has not joined the right parties nor indeed pleaded the same. The PAC is trying to enhance efficiency in the discharge of its functions in keeping the Executive under check and the court cannot interfere with its Constitutional mandate under the guise of Judicial Review.

For the reasons we have considered in this judgment, we come to the conclusion that the orders sought are not merited, the wrong party is before the court and therefore the orders sought cannot issue against the Respondent. We hereby dismiss the Notice of Motion dated 3rd November 2006, with costs to the Respondent.

Dated and delivered this 19th day of October 2007

J.G. NYAMU

JUDGE

R.P.V. WENDOH

JUDGE