



Mamo & 4 others v Cabinet Secretary, Ministry for the National Treasury and Economic Planning & another; Muchoki & 8 others (Interested Parties) (Petition 2 of 2023) [2024] KEHC 173 (KLR) (Constitutional and Human Rights) (19 January 2024) (Judgment)

Neutral citation: [2024] KEHC 173 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION 2 OF 2023

LN MUGAMBI, J

JANUARY 19, 2024

BETWEEN

**MOLU JILLO MAMO 1ST PETITIONER
HARO GUYO OKOLA 2ND PETITIONER
KIRIGHA MWANYASI 3RD PETITIONER
ELYAS SHEIKH ABDINOOR 4TH PETITIONER
PATRICK MUIRURI 5TH PETITIONER**

AND

**CABINET SECRETARY, MINISTRY FOR THE NATIONAL TREASURY AND
ECONOMIC PLANNING 1ST RESPONDENT
ATTORNEY GENERAL 2ND RESPONDENT**

AND

**PATRICK MUCHOKI INTERESTED PARTY
RUTH CHARITY WANYONYI INTERESTED PARTY
BARBARA KAWIRA JAPAN INTERESTED PARTY
ROBLEY OTIENO NGOJE INTERESTED PARTY
SAMWEL KARIUKI MAINA INTERESTED PARTY
CHRISTINE KIBET INTERESTED PARTY
BEATRICE KONES INTERESTED PARTY**



JUDGMENT

Background

1. This Petition was first lodged before the Employment and Labour Relations Court (ELRC) at Nairobi as ELRC Petition No. E051 of 2023. However, Hon. Lady Justice Anna Ngibuini Mwaure of the ELRC Court ruled on 17/3/2023 that the Employment and Labour Relations Court did not have jurisdiction. The Judge held that the matter was in respect of Board Members who are not employees in accordance with Section 2 of the Employment Act. The Judge thus transferred the Petition to the High Court for determination and directed that it be placed before the proper Division of the High Court for hearing and final disposal.
2. Prior to hearing the Petition, the Petitioners had filed two applications under certificate of urgency, one was dated 16/3/2023 and another dated 11/4/2023. The application dated 11/4/2023 sought to join LSK as the 8th interested Party and to amend the Petition to reflect the same. This application was allowed on 23/5/2023. The application dated 16/3/2023 sought interim conservatory orders but it was compromised at the request of the Petitioner with the concurrence of the rest of the parties on 14/6/2023 to pave way for the hearing of the main petition.

The Petition

3. The initial Petition is dated 16th March 2023. It was amended on 11th April 2023. The petitioners seek the following reliefs against the respondents:
 - i. A Declaration do issue from this Honourable Court that pursuant to Article 47 of the Constitution of Kenya, Section 4 of Fair Administrative Action Act (No. 4 of 2015) the 1st Respondent is mandated to give prior and adequate notice accompanied with written reasons before revocation of any appointment of the Board Members of the Local Authorities Provident Fund.
 - ii. A declaration do issue from the Honourable Court that the 1st Respondent action of publishing Gazette Notice No. 1407 Vol. CXXV-No. 30 dated 6th February 2023 and Gazette Notice No. 2871 Vol. CXXV-No. 57 dated 6th March 2023 purporting to revoke the petitioners appointment as Board Members of the Local Authorities Provident Fund violated the Petitioners' constitutional rights and the law as enshrined under Article 28, 47 and 236 of the Constitution of Kenya and Section 4 of Fair Administrative Action Act (No. 4 of 2015).
 - iii. An order of certiorari do issue to bring into this Court and quash the purported Gazette Notice No. 1407 Vol. C: XXV-No. 30 dated 6th February 2023 and Gazette Notice No. 2871 Vol. C:XXV-No. 57 dated 6th March 2023 purporting to revoke the petitioners' appointment as Board Members of the Local Authorities Provident Fund.
 - iv. A permanent injunction restraining the Respondents, their representatives, employees, servants and/ or agents or anybody working under them from purporting to appoint any other person to replace the Petitioners as Board Members of the Local Authorities Provident Fund at least for the remainder of the petitioners' term.



- v. General Damages for the violation of the petitioners' constitutional rights.
- vi. Any other or further relief that this court may deem fit to grant.
- vii. Cost of the petition be borne by the Respondents.

The Petitioners' Case:

4. The amended Petition dated 11/4/2023 is supported by the 1st petitioner's affidavit dated 16/3/2023 and the further affidavit dated 26/6/2023 and also, the affidavits of 2nd to 5th petitioners affirming the facts deposed to by the 1st petitioner.
5. The 1st petitioner deposes that he and the other petitioners were appointed as Members of the Local Authorities Provident Fund Board pursuant to Section 5 of the [Local Authorities Provident Fund Act](#) (Cap 272) Laws of Kenya and subsequent thereto, issued with appointment letters by the 1st respondent. The 1st petitioner was appointed through Gazette Notice No.6382 and was given the appointment letter on 21st June 2022. The appointment of the rest of the petitioners was made through Gazette Notice No.10642. The 2nd to 4th petitioners received their appointment letters on 14/12/2021 while the 5th petitioner was issued with his letter of appointment on 25/10/2021. The term of the appointment was for 3 years. They were subsequently trained on corporate governance for Directors before taking up office.
6. The present petition is precipitated by the action of the 1st respondent taken on 6/2/2023 pursuant to Gazette Notice No.1407 Vol. CXXV – No. 30 in which the appointment of the 2nd petitioner as a Member of the Board was revoked and, in his place, the 7th interested party was appointed as the new Board member for a term of 3 years. Similar action was taken by the 1st respondent through Gazette Notice No.2871 Vol.CXXV – No.57 dated 6th March 2023 by revoking the appointments of the rest of the Petitioners as Members of the Board, and their place, appointing the 1st to 6th interested parties as the new Board members.
7. The petitioners are aggrieved by the 1st respondent's actions which they contend was in violation of Article 47 of [the Constitution](#). They protest that they were neither issued with notice of impending revocation of their appointments nor the reasons for the revocation. That, they were not given a hearing to establish their suitability or lack thereof to hold office as Board Members.
8. That the revocation was contrary to the provisions of the Local Authorities Board Charter rules on vacation of office specified under paragraph 4.1.8, including, they had not been convicted and sentenced for any criminal offence for a term exceeding six months or fine exceeding 2000 thousand shillings, found to have engaged in gross misconduct, or incapable of performing their duties as Board Members among others.

It is the petitioners' case, therefore, that the revocation of their appointments was irregular, unlawful and in violation of their rights. That the 1st respondent's action is a departure from the constitutional tenets of good governance as provided for in Articles 10 (2), 73 (2) (d) which requires leaders to be accountable to the public for their decisions and actions and 236 (b) which provides that a public officer shall not be dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary process without the due process of the law among other constitutional provisions.

Petitioners' Submissions

9. Kinaro and Associates for the Petitioners filed written submissions and list of authorities dated 26th June, 2023.



10. On jurisdiction, Counsel submitted that the Employment and Labour Relations Court had declined jurisdiction in favour of this Court hence the contrary assertion by the respondents and the interested party is out-of-place.
11. Concerning the threshold required for constitutional petitions, Mr. Kinalo submitted that the present petition meets the requisite standard laid down in *Anarita Karimi Njeru vs. Republic* (1979) eKLR and subsequently reiterated in *Mumo Matemo v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR as also in *Sella Rose Anyango v Attorney General & 2 others* [2021] eKLR. He argued that the Petition identifies the specific constitutional provisions that were violated by the actions of the 1st respondent and the manner in which the 1st respondent had violated those provisions.
12. Counsel submitted that although the interested parties opposed this Court’s jurisdiction by citing Section 7 and 9 of the Fair Administrative Actions Act which provides for Judicial Review as the basis for challenging administrative actions, the operative word in the said Sections is “may” hence the petitioners had the option to choose the forum to ventilate the violations. In any event, the petitioners contended that under Article 23(3) (f) of *the Constitution*, the Court has the power to grant a judicial review relief to redress violation of a constitutional right.
13. Counsel submitted that the 1st respondent’s revocation of the petitioner’s appointments was without any reason and failed to afford the petitioners an opportunity to be heard contrary to the provisions of Fair Administrative Actions Act and Article 47 of *the Constitution*. He cited the case of *Okoit & another v Public Service Commission & 73 others; Law Society of Kenya & another (Interested Parties)* (Petition 33 & 42 of 2018 (Consolidated)) [2021] KEHC 464 (KLR) (Constitutional and Human Rights) (20 April 2021) which held thus:

“...Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action reflects some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.”
14. Equally, Counsel submitted that being a state official, the 1st respondent is bound by *the Constitution* and has an obligation to respect, defend and uphold *the Constitution*. Similarly, uphold Article 10 and Article 73 (2) (d) of *the Constitution*.
15. Reliance was also placed in the case of *Law Society of Kenya v Attorney General & another; Mohamed Abdulahi Warsame & another (Interested Parties)* [2019]eKLR where the court stated:

“...This country has a unique constitution that requires justification of every governmental or public action, taken or not taken. On that note, therefore, actions of any state officer or public officer in our Republic, including that of the President, must meet the constitutional test of justification as an incidence of the rule of law and a founding value in our constitution...”
16. It was submitted for the petitioners that the fact that they only became aware of the revocation of their appointment through media, social media and incessant calls from friends and family members, their



inherent right to dignity and right to have that dignity respected was violated contrary to the provisions of Article 28 of *the Constitution*. Likewise, that the actions of the 1st respondent violated Article 236 of *the Constitution* which protects the rights enjoyed by the petitioners as public officers and the right to unfair termination and revocation of their appointment.

17. That the degazettement of the petitioners for no reason after undergoing mandatory training on corporate governance at the expense of the resources of the Board by restarting fresh training process for the new appointees was a waste of public resources which violated the principles of Article 232 (1) (b) of *the Constitution*.
18. That although the respondents and interested parties argued that the 1st respondent was well within his statutory mandate under Section 51 of the *Interpretation and General Provisions Act* to take the actions in question, the petitioners submitted that *the Constitution* ought to be the focal point as the supreme law of the land. The petitioners relied on *Abel Odhiambo Onyango & Another v Cabinet Secretary Ministry of Health & 2 Others* [2014] eKLR where it was held thus:

“(34). The power to appoint and remove must, however, be exercised in accordance with the provisions of *the Constitution* and must not be exercised in a manner that violates a person’s rights”.

19. Likewise, they relied on *Mohamed Aktar Kana –vs- The Attorney General Nairobi HCCP No. 544 of 2010, County Government of Nyeri & Another –vs- Cecilia Wangechi Ndungu, Nyeri CACA No. 2 of 2015, and Abdiazizi Sheikh Maad & 3 others v Governor Mandera County & 2 others* [2020] eKLR.
20. Counsel accordingly submitted that the 1st respondent was under an obligation to follow the due process while acting fairly and reasonably. The petitioners urged this Court to find that the powers conferred under Section 51 of the *Interpretation and General Provisions Act* are to be exercised in accordance with *the Constitution*.
21. He urged the Court to grant the reliefs sought in the Petition. In deciding on appropriate remedies, he urged the court to strike a balance between addressing the petitioners’ constitutional rights that have been violated vis a vis fairness to the Board and the Public who will be affected if the reliefs sought are not granted. He referred to *Law Society of Kenya v Attorney General & another; Mohamed Abdulahi Warsame & another (Interested Parties)* (supra) where the court stated thus:

“(45) The determination of appropriate relief, therefore, calls for the balancing of the various interests that might be affected by the remedy. The balancing process must at least be guided by the objective, first to address the wrong occasioned by the infringement of the constitutional right; second, to deter future violations; third to make an order that can be complied with; and fourth, of fairness to all those who might be affected by the relief. Invariably, the nature of the right infringed and the nature of the infringement will provide guidance as to the appropriate relief in the particular case...”

The 1st and 2nd Respondents’ Case

22. The respondents filed a replying affidavit dated 7th June 2023 sworn by Njuguna Ndung’u.
23. The deponent stated that a majority of the petitioners were appointed as part of the 8 Board Members through Gazette Notice No.10642 for a term of three years effective 6th October 2021.



24. Come the 7th and 8th February 2022 two Members of the Board resigned to pursue political interests in line with the directive by the Head of Civil Service in Circular No.OP.CAB/39/1A dated 28th January 2022. That caused vacancies in the Board, one of which was filled through the appointment of the 1st petitioner under Gazette Notice No.6382 dated 3rd June 2022.
25. Subsequently, on 10/2/2023 pursuant to Gazette Notice No.1407; the 2nd petitioner's appointment was revoked and was replaced by the 7th interested party. Likewise, the appointments of the 1st, 3rd, 4th and 5th petitioners were revoked through Gazette Notice No.2871 dated 6th March 2023 and their place taken up by the 1st to 6th interested parties.
26. The 1st respondent deposed that in making the revocations and new appointments, he acted within the powers conferred by the relevant Act to appoint the members of the Board of the Fund. He contended that the Act allows the President to issue directions for removal of the Board Members where it appears that the Board has failed to carry out its functions notwithstanding any provisions in any other the law or the Articles of Association establishing the Board. He deposed that the appointments were made in good faith and without prejudice and that no evidence has been provided to demonstrate that the 1st respondent flouted any law in the manner he made the appointment of the members of the Board.
27. He asserted that the Orders sought in this Petition will be prejudicial to the public in their effect as they will lead to halting operations of the Board and hence the Fund. That issuance of such Orders will be in vain considering that the 1st to 7th interested parties had been sworn and were in office already.

The respondents contested the jurisdiction of this court by stating that this was an employment matter which was within the jurisdiction of the Employment and Labour Relations Court (ELRC).

Respondents' Submissions

28. State Counsel Eve Mbede filed written submissions dated 18th July 2023.
29. She submitted that the Board Members were lawfully appointed under Section 5 of the [Local Authorities Provident Fund Act](#). That this action was taken in good faith to ensure continued operation and governance of Local Authorities Provident Fund. That the 1st respondent acted in exercise of statutory power conferred by the Act and the allegations by the petitioners were based on misinterpretation of the provisions of the Act.
30. Ms. Mbede urged the Court to decline an invitation to adopt an overly broad interpretation of Article 47 of [the Constitution](#) to invalidate lawful appointments made by competent authorities in compliance with the law. She relied on the Ugandan case of *Pastoli ...Vs..Kabale District Local Government Canal & Others* (2008) 2EA 300 where Justice Kasule held that:

“In order to succeed in an application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.”

She also relied on *Municipal Council of Mombasa...Vs...Republic, Umoja Consultants Ltd, Nairobi Civil Appeal No.185 of 2007(2002) eKL*

31. Ms. Mbede urged the court to respect the principle of separation of powers and refrain from encroaching upon the mandate of the Executive unless there is a plain indication of illegality, irrationality or procedural impropriety. In this case, Counsel noted that the petitioners had not proved these elements to justify grant of this Order.



32. On whether a permanent injunction should be granted to restrain the respondents, Counsel cited *Giella v Cassman Brown & Co Ltd* [1973] EA 358 where it was observed that grant of a permanent injunction is an extraordinary remedy that should only be granted in exceptional circumstances having established the threshold of a prima facie case with a probability of success, the applicant's irreparable injury if not granted the orders and a balance of convenience. Likewise, *Nguruman Ltd v Jan Bonde Nielsen & 2 Others* [2014] eKLR.
33. Further reliance was placed in *Pius Kipchirchir Kogo vs. Frank Kimeli Tenai* [2018] eKLR and *Apollo Mboya v Attorney General & 2 others* [2018] eKLR.
34. According to Counsel the petitioners' arguments were not sufficient to indicate a likelihood of success of their case. Moreover, the petitioners had failed to demonstrate that they will suffer irreparable harm if the injunction is not granted. Additionally, on a balance of convenience and public interest, granting the permanent injunction would disproportionately favor the petitioners' interests without a consideration of the broader implications to the Local Authorities Provident Fund and the public. On this premise, Counsel argued that the petition lacked merit and ought to be dismissed.

1st to 7th Interested Parties Case

35. The interested parties opposed the Petition by filing grounds of opposition dated 20th April 2023 in which they stated that:
 - i. The petitioners have not demonstrated with precision how their fundamental rights and freedom under *the Constitution* have been violated or are threatened contrary to Article 22(1) of *the Constitution* and the holding in the locus classicus in *Mumo Matemu - v - Trusted Society of Human Rights Alliance* (2013) eKLR and *Anarita Karimi Nieru* (1979) KLR54.
 - ii. The Petition does not disclose any constitutional violation by the Respondents or the interested parties upon the petitioners.
 - iii. The Petition does not disclose any reasonable cause of action against Respondents.
 - iv. The Petition is misconceived, incompetent and bad in law and an open abuse of the court process.
 - v. The orders sought are discretionary and their scope is limited. In the circumstance, it will be in the interest of justice that they are denied.
 - vi. In the circumstance, the petitioner's Petition and the orders or prayers sought therein are monumental, procedural and a legal nullity, abuse of the court process, vexatious, mischievous. A proper candidate for dismissal and striking out with costs.
36. Correspondingly the 1st, 2nd, 4th and 5th interested parties filed their replying affidavits dated 2nd June and 5th June 2023 all of which reiterated the averments in the 3rd interested party's replying affidavit dated 31st May 2023. A further response dated 4th July 2023 was relied on in response to the Petition.
37. The 3rd interested party swore that they are Members of the Board of Directors of the Local Authorities Provident Fund Board established under Section 5 of the *Local Authorities Provident Fund Act*. She stated that the *State Corporations Act*, Cap 446 and the *Local Authorities Provident Fund Act*, do not provide for procedures on appointment hence the Government established the Code of Governance for State Corporations (MWONGOZO) to ensure compliance with Article 10 and Article 27 of *the Constitution*.



38. It is stated that Clause 1.1 (10) and 11 of the Code of Governance for State Corporations provides that Board Members of state corporations are to be appointed by the Cabinet Secretary of the parent ministry through a Gazette Notice. She stated that the 7th interested party was appointed vide Gazette Notice No. 1407 dated 6th February 2023, Volume CXXV - No. 30. On the other hand, the 1st to 6th interested parties were appointed vide Gazette Notice No. 2871 dated 6th March 2023, Volume CXXV- No. 57.
39. She further asserted that Section 51 of the *Interpretation and General Provisions Act* provides that the power to appoint includes the power to suspend, dismiss and to reappoint hence the 1st respondent was within his power when it issued the impugned Gazette Notices revoking petitioners' appointments.
40. She deposed that the Local Authorities Provident Fund scheme has over 70,000 members including employees of County Governments and Water Companies with a fund value of over Kenya Shillings 57 billion. In view of this, she argued that if the orders sought by the petitioners are granted, it shall adversely interfere with the management and running of the Local Authority Provident Fund Board.
41. She asserted that the Petition has failed to meet the set threshold for constitutional petitions. That, a person aggrieved by an administrative action or decision is required to apply for review of the administrative action by way of Judicial Review as provided for under Section 7 and 9 of the *Fair Administrative Action Act* hence the Petition lacks merit and ought to be dismissed.

1st to 7th Interested Party's Submissions

42. The interested parties were represented by the firm of Daniel and Kenneth Advocates LLP who filed written submissions and a list of authorities on their behalf dated 4th July 2023.
43. It was submitted that this Court does not have jurisdiction to entertain this suit which ought to be decided on the basis of Judicial Review. Counsel pointed out that the petitioners key contention is the process of appointment and revocation of the Board Members.
44. Counsel noted that Section 7(1) of the Fair Administrative Actions Act provides that any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to the Court. In Counsel's view the word may should be interpreted to mean an obligatory duty citing the Australian case of *Johnson's Tyne Foundry Pty Ltd v Maffra Shire Council (1948) 77 CLR 544 at 568* where it was held that:

“May’, unlike ‘shall’, is not a mandatory but a permissive word, although it may acquire a mandatory meaning from the context in which it is used, just as ‘shall’ which is a mandatory word, may be deprived of the obligatory force and become permissive in the context in which it appears.”
45. In support of the argument of Judicial Review, Counsel cited the case of *Republic v Director of Immigration Services & 2 others Exparte Olamilekan Gbenga Fasuyi & 2 others (2018) eKLR* where it was held that:

“ 42. Judicial Review is more concerned with the manner in which a decision is made than the merits or otherwise of the ultimate decision. As long as the processes followed by the decision-maker are proper, and the decision is within the confines of the law, a Court will not interfere”



46. Comparable reliance was placed in Chief Constable of the North Wales Police VS Evans (1982)1 WLR 1155 and Republic v Director of Immigration Services & 2 others Exparte Olamilekan Gbenga Fasuyi & 2 other (2018) eKLR.

47. It was hence submitted that the petitioners ought to have filed the suit as prescribed by law, that is as a Judicial Review and so this Court should not entertain the matter. The case of Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Other Pet. 14A, 14B & 14C of 2014 of [2014] eKLR was cited where the court held:

“The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis.”

48. It was also submitted that the Petition fails to disclose with a reasonable degree of precision the actions complained of. That the petitioners did not provide the particulars of allegations showing the manner their fundamental rights were violated. In essence, the Petition does meet the constitutional threshold set out in the case of Mumo Matemu vs. Trusted Society of Human Rights Alliance & 5 others (supra) where it was held that:

“...The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel,

M.R said in 1876 in the case of Thorp v Holdsworth (1876) 3 Ch. D. 637 at 639 holds true today:

“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

49. The Interested Parties also relied on Suleyman Bittock Abdhi t/a Azhar Progressive High School & 40 others vs. Ali Salim Karama Mawaki Salim Karama (2022) eKLR where the court remarked:

“On perusal of the Petitioner’s pleadings, the evidence as well as the submissions of the parties, it is my considered view that the Petitioner has not met the requirements of a Constitution Petition. Although the Petitioner has pleaded provisions of *the Constitution*, he has not demonstrated to the required standard how his individual rights and fundamental freedoms were violated, infringed or threatened by the Respondents. He has not adduced any evidence to demonstrate the alleged violations.”

50. The Interested Parties further contended that contrary to the petitioners’ assertions, the 1st respondent acted within his legal mandate in revoking the appointment of the petitioners and in appointing the 1st to 7th interested parties in their place hence the petition is an abuse of the Court process. They cited the provisions of Section 5 of the *Local Authorities Provident Fund Act*, Clause 1.1 (10) and 11 of the Code of Governance for State Corporations and Section 51 of the *Interpretation and General Provisions*



Act in support of this standpoint and relied on the case of Law Society of Kenya vs. Kenya Revenue Authority & another (2017) eKLR where it was held that:

“In construing a statutory provision, the first and the foremost rule of construction is that of literal construction. All that the Court has to see at the very outset is, “what does the provision say.” The Courts are bound by the mandate of the Legislature and once it has expressed its intention in words which have a clear significance and meaning, the Court is precluded from speculating.”

51. The interested parties urged the court to find that the petitioners had not proved their case hence not entitled to the reliefs sought. They relied Sophia Nyakerario Maina and Sebastian Adala (Suing on their own behalf and in the interest of 440 other Applicants being inhabitants of Properties known as Land Reference Number 209/12016) v Kenya Airports Authority & 3 others (2020) eKLR and asked the court to dismiss the Petition.

Analysis and Determination

52. Having regard to the pleadings, affidavits by the parties and their submissions, the court considers the following to be the issues for determination in this Petition:
- i. Whether this Court has jurisdiction to decide this Petition.
 - ii. Whether the Petition meets legal threshold of a constitutional Petition.
 - iii. Whether the 1st Respondent’s action in revoking the Petitioners’ appointment and appointing the 1st to 7th Interested Parties to take up their place in the Local Authorities Provident Fund Board was:
 - a. Was in violation of the constitution
 - b. Violated the petitioners’ constitutional rights under the Bill of rights.

1. Whether The Court Has Jurisdiction To Decide The Petition

53. The challenge to the jurisdiction of the Court was two-pronged. The 1st to 7th interested parties contended that what is before the court is an employment dispute which only the Employment and Labour Relations Court could adjudicate. The other argument was that the petition is based on an administrative process which can only be legally challenged through a Judicial Review process as provided for by Section 7 (1) of the Fair Administrative Actions Act and not through a Constitutional Petition.
54. A jurisdictional question is a matter of great significance. It connotes the ability of a court to take cognizance of a matter for purposes of adjudication.
55. Black’s Law Dictionary, 10th Edition, defines jurisdiction as ‘A court’s power to decide a case or issue a decree.’
56. Judicial decisions have long held that where a jurisdictional question is raised, the court must give it the foremost consideration and ensure it is settled before delving into the dispute before it. The Court of Appeal in Civil Appeal Number 244 of 2010 Phoenix of E.A Assurance Company Vs. S.M Thiga T/A Newspaper Service (2019) eKLR restated this position as follows:

“...What is jurisdiction? In common English parlance, ‘Jurisdiction’ denotes the authority or power of the Court to hear and determine judicial disputes or to even take cognizance



of the same. This definition clearly shows before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and decide...Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a complaint one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, a Court cannot confer jurisdiction on itself..."

57. The Supreme Court in the Matter of the Interim Independent Electoral Commission, Constitutional Application Number 2 of 2011 (2011) eKLR held:

"Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law." (see also the Supreme Court case of Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & others (2012) eKLR).

58. The jurisdiction of the High Court to deal with constitutional disputes is prescribed by Article 165(3) of *the Constitution* which provides as follows:

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

- a. unlimited original jurisdiction in criminal and civil matters;
- b. jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
- c. jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
- 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
 - iv. a question relating to conflict of laws under Article 191.

59. In regard to enforcement of constitutional rights, an aggrieved party has the right to institute proceedings under Article 22 claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or is infringed or is threatened. In any proceedings brought under Article 22, the Court is empowered to redress a denial, violation or infringement of, or threat to, a right or



fundamental freedom and may grant any appropriate relief including reliefs specified under Article 23(3) (a, b, c, d, e and f) of *the Constitution*. The Article provides thus:

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- (1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.
- (3) In any proceedings brought under Article 22, a court may grant appropriate relief, including--
 - a. a declaration of rights;
 - b. an injunction;
 - c. a conservatory order;
 - d. a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
 - e. an order for compensation; and
 - f. an order of judicial review.

60. One of the reasons raised for objecting to the jurisdiction of this Court is that this is an employment dispute which falls within the competence of Employment and Labour Relation Court (ELRC). It is important to recognize that initially, this Petition was lodged before the Employment and Labour Relations Court as ELRC Petition/E051/2023. The ELRC Judge who handled the matter upon presentation to the Court on 17/3/2023, Hon. Lady Justice Anna Ngibuini Mwaure ruled that ELRC did not have jurisdiction and transferred the matter to the High Court. In a brief ruling, the Judge stated:

“...The Court has no jurisdiction to deal with cases pertaining to Board Members as they are not employees as defined in Section 2 of the *Employment Act*. The file is referred to the High Court for mention on 21st March 2023 for allocation to the right division...”

61. The above ruling was not challenged on Appeal nor was any review of the same sought. Reopening the matter before this court is an invitation to sit on appeal of that determination which I decline. In the absence of a successful appeal against the decision of the ELRC Judge, this court shall defer to the decision of ELRC that held that it does not have jurisdiction over this matter.

62. Besides, this court is also persuaded that by reasoning of the Court of Appeal in the case of Attorney General & 2 others v Okiya Omtata Okoiti & 14 others [2020] eKLR on jurisdiction of ELRC under Article 162 (2) of *the Constitution* and Section 12 of the Employment and *Labour Relations Act*. The Court held:

“...Pursuant to Article 162(2) of *the Constitution*, Parliament enacted the *Employment and Labour Relations Court Act*, whose purpose, as the long title states, is to “establish the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations”. By section 12(1) of the Act, the jurisdiction of the Court is to hear disputes “relating to employment and labour relations”, including:



- (a) disputes relating to or arising out of employment between an employer and an employee;
- (b) disputes between an employer and a trade union;
- (c) disputes between an employers organisation and a trade union's organisation;
- (d) disputes between trade unions;
- (e) disputes between employer organisations;
- (f) disputes between an employer's organisation and a trade union;
- (g) disputes between a trade union and a member thereof;
- (h) disputes between an employer's organisation or a federation and a member thereof;
- (i) disputes concerning the registration and election of trade union officials; and
- (j) disputes relating to the registration and enforcement of collective agreements.

The Act further specifies the parties who may lodge or against whom may be lodged before the court, applications, claims, or complaints, to be an employee, an employer, a trade union, an employer's organisation, a federation, the Registrar of Trade Unions, the Cabinet Secretary or any office established under any written law for such purpose.

From the above provisions of *the Constitution* and the Act, it is obvious that the jurisdiction of the ELRC is precise and limited rather than unlimited. The straight forward jurisdictional question in this appeal therefore is whether recruitment of members of the National Land Commission falls within the meaning of a dispute relating to employment and labour relations. We have already set out the provisions of *the Constitution* regarding the Commission which indicate that it is an independent constitutional Commission whose members are appointed in accordance with a special procedure provided by *the Constitution* and the Act..."

63. By parity of reasoning, this Court finds that the appointment of the Members of the Board is not an employment and labour relations matter. Board Members are not employees of the organizations they are appointed to serve nor are they subject to the control of the appointing authority. They do not serve under a contract of service. They are public officers whose appointment and functions are governed by certain statutory provisions. Ideally, they are only subject to the law. They formulate policy and provide strategic direction of an organization which the employees of that particular organization are required to implement. The provisions of Section 12 of the ELRC Court limit the jurisdiction of the ELRC court to employer-employee relationship and labour relations within that operating environment. The present dispute is thus outside the scope of ELRC jurisdiction as correctly held by the learned ELRC Judge. As this Court enjoys unlimited jurisdiction except in matters that exclusively fall within the jurisdiction of other superior courts under Article 162 (2); it follows that this is the right forum for the adjudication of this dispute.
64. The other issue was the contention that the petitioners should have approached the court through judicial review instead of filing a constitutional petition. The 1st to 7th Interested Party relied on Section 7(1) of the Fair Administrative Actions Act for proposition. The said section provides:
7. Institution of proceedings



- (1) Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to—
 - a. a court in accordance with Section 8;
 - b. or (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law.’

65. It is instructive that the Act has used the permissive word ‘may.’ It therefore means that this is not a mandatory legal prescription.

66. Further, Fair administrative action is a right provided for in Article 47 of *the Constitution* for which a judicial review remedy under Article 23 (3) (f) may issue. In the South African case of *President of South Africa and Others vs. South African Rugby Union and Others* (CCT 16/98) 2000 (1) SA the Court affirmed the right to fair administrative action as constitutional right in the following words:

“...The right to just administrative action is now entrenched as a constitutional control over the exercise of power. Principles previously established by common law will be important though not necessarily decisive, in determining not only the scope of section 33, but also the content. The principal of function of section 33 is to regulate the conduct of public administration, and, in particular, to ensure where action is taken by the administration affects or threatens individuals, the procedure followed comply with the constitutional standards of administrative justice...”

67. In the Kenyan context, the Court in *Dry Associates Ltd Vs. Capital Markets Authority & Another* (2012) eKLR said:

“...Article 47 is intended to subject administrative processes to constitutional discipline hence relief for administrative grievances is no longer left to the realm of common law or judicial review under *Law Reform Act* (Cap 26 of the Laws of Kenya) but is to be measured against the standards established by *the Constitution*...”

68. Being a Constitutional right, it means any person aggrieved by unfair administrative action may commence court proceedings under Article 22 for a remedy. This will be through a Petition as per *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, rule 4 as read with rule 10. Rule 4 provides thus:

4(1) Contravention of rights or fundamental freedoms.

4. (1) Where any right or fundamental freedom provided for in *the Constitution* is allegedly denied, violated or infringed or threatened, a person so affected or likely to be affected, may make an application to the High Court in accordance to these rules.’

10. (1) An application under rule 4 shall be made by way of a petition as set out in Form A in the Schedule with such alterations as may be necessary.”

69. A Constitutional Petition is thus a proper mode through which violation of the right to fair administrative action under Article 47 may also be brought. It is not a legal misnomer as the 1st to 7th interested parties appeared to suggest. The claim that this court lacks jurisdiction merely because the Petitioners chose to file a Constitutional Petition alleging violation of rights under Article 47 rights instead of a Judicial Review Application as provided for in section 7(1) of the Fair Administrative Actions Act is thus misplaced. In any event, besides allegations as to violation of Article 47; the



petitioners make other claims of infringement constitutional rights and constitutional principles which would not have been fully ventilated in a pure judicial review matter.

ii) Whether The Petition Meets Legal Threshold Of A Constitutional Petition.

70. The 1st to 7th Interested Party contended that the Petition does not meet the test of a Constitutional Petition as laid down in Mumo Matemu case (supra) hence is an abuse of the Court process. Mumo Matemu's case was an affirmation by the Court of Appeal of an earlier principle laid down in Anarita Karimi Njeru's case (1979) 1 KLR 154. Simply put, it laid emphasis on parties to draw petitions with precision so that the party against whose violation of rights is alleged is able to respond to the allegations. In affirming Anarita Karimi Njeru case (supra), the Court of Appeal in Mumo Matemu v Trusted Society of Human Rights Alliance & (supra) held thus:

“...The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of Thorp v Holdsworth (1876) 3 Ch. D. 637 at 639 holds true today:

“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

The petition before the High Court referred to Articles 1, 2, 3, 4, 10, 19, 20 and 73 of *the Constitution* in its title. However, the petition provided little or no particulars as to the allegations and the manner of the alleged infringements. For example, in paragraph 2 of the petition, the 1st respondent averred that the appointing organs ignored concerns touching on the integrity of the appellant. No particulars were enumerated. Further, paragraph 4 of the petition alleged that the Government of Kenya had overthrown *the Constitution*, again, without any particulars. At paragraph 5 of the amended petition, it was alleged that the respondents have no respect for the spirit of *the Constitution* and the rule of law, without any particulars.”

71. In deciding whether this threshold has been met, the court only needs to scrutinize the Amended Petition dated 11/4/2023.

72. Paragraph 34 is preceded by a sub-heading that reads as follows: “Particular Breach Of The Constitutional And The Law” In the succeeding paragraphs, specific articles of *the constitution* alleged to have been flouted are set out. For instance, Article 47 is set out in paragraph 34 and 35. Paragraph 36 sets out the provisions of Section 4 of the *Fair Administrative Action Act* (No. 4 of 2015). Paragraph 37 presents the factual situation which the petitioners allege occasioned infringement of the above constitutional and statutory provisions, namely abrupt revocation of their appointment without notice and reasons. They further proceed and cite other constitutional provisions of which the administrative action complained of violated and narrate the manner the violation was orchestrated in respect to articles 10, 19, 24 73 (2) (d), 232 (1) (b) and 236 of *the Constitution*.

73. The allegation that the Petition lacks precision as regards the specific articles of *the Constitution* violated and the manner in which violation took place is thus not correct. It is accordingly rejected.



iii) Whether The 1st Respondent's Action In Revoking The Petitioners' Appointment Whilst Appointing The 1st To 7th Interested Parties To The Local Authorities Provident Fund Board Was Unconstitutional And Unlawful And In Violation The Petitioners' Constitutional Rights

74. The bone of contention in this petition is the 1st respondent's act of revoking the petitioners' appointment to the Local Authorities Provident Fund Board without giving them prior notice, not giving any reasons for their removal and/or providing them with an opportunity to be heard and in abruptly appointing the 1st to 7th interested parties in their place. On the other hand, the respondents and the 1st to 7th interested parties argued that the revocations and subsequent appointments were done in accordance with the 1st respondent's legal mandate under Section 5 of the [Local Authorities Provident Fund Act](#), Cap 272, Clause 1.1 (10) and 11 The Code of Governance for State Corporations (MWONGOZO) and Section 51 of the [Interpretation and General Provisions Act](#).

75. The question to be answered therefore is whether these revocations and appointments complied with the laid down constitutional principles.

76. [The Constitution](#) provides for Fair Administrative action. Article 47 provides:

47

- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
- (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall –
 - a. provide for review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
 - b) promote efficient administration.

77. Under Section 4 of the Fair Administrative Actions Act which was enacted to breathe life to Article 47 of [the Constitution](#); the rights of a person likely to be affected by an administrative decision are protected. It states:

Section 4: Administrative action to be taken expeditiously, efficiently, lawfully etc

1. Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.
2. Every person has the right to be given written reasons for any administrative action that is taken against him.
3. Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision–
 - a. prior and adequate notice of the nature and reasons for the proposed administrative action;



- b. an opportunity to be heard and to make representations in that regard;
 - c. notice of a right to a review or internal appeal against an administrative decision, where applicable;
 - d. a statement of reasons pursuant to Section 6;
 - e. notice of the right to legal representation, where applicable;
 - f. notice of the right to cross-examine or where applicable; or
 - (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.
- (4) The administrator shall accord the person against whom administrative action is taken an opportunity to–
- a. attend proceedings, in person or in the company of an expert of his choice;
 - b. be heard;
 - c. cross-examine persons who give adverse evidence against him; and
 - (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.
- (5) Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.
- (6) Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of *the Constitution*, the administrator may act in accordance with that different procedure.

78. Reading through the Constitutional together with the provisions of the Fair Administrative Actions Act, it is apparent that that both *the Constitution* and the statute incorporate the principle of reasonableness and procedural fairness in administrative actions. The requirement for prior notice, reasons for the decision, providing an opportunity to be heard are key defining standards of a reasonable and procedurally fair administrative action.

79. Administrative actions are thus required to abide by these constitutional and statutory benchmarks unless specifically limited by law pursuant to Article 24 and such limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom and taking into account the nature of the fundamental freedom, the importance and purpose of limitation, the nature and extent of limitation among others.

80. In the present case, the 1st to 7th Interested Party submitted that neither section 5 of the Local Government Provident Fund and The State Corporation Act provides for procedures for the Appointment of the Board Members.



81. The most important consideration however is the fact that neither Section 5 of the Local Government Provident Fund nor the provisions of the State Corporation Act limit in any way the application of Article 47 of *the Constitution*. This means that in making administrative decisions under the said Acts, any public official making an administrative decision under the said Acts is fully bound by provisions of Article 47 in line with the requirement of Article 3 (1) of *the Constitution* which binds every person to respect, uphold and defend *the Constitution*. In addition, Article 10 binds all State and Public Officers whenever they enact, apply or interpret any law or make or implement any policy decisions. The national values and principles governance under article 10 (2) include human dignity, rule of law, good governance, transparency and accountability among others.
82. Despite these provisions, the 1st Respondent revoked the appointment of the Petitioners to the Board of the Local Authorities Provident Fund and replaced them with the 1st to 7th Interested Parties without giving reasons for their premature termination of the terms. They were neither given prior notice for the decision nor were they given an opportunity to be heard.
83. Can this decision be said to meet the constitutional standard of being reasonable and procedurally fair as required by Article 47 of *the Constitution*? This court finds that it does not. Firstly, it exposes the petitioners to humiliation and indignity. The petitioners and the public at large were left to speculate as to the reasons for their premature removal from the Board membership. Secondly, in the absence of any reasons, it points to lack of accountability and transparency in execution of public duties which is an affront to national values and principles of governance specified in Article 10 (2) (c) of *the Constitution*. In this regard, the remarks by the Court in the Law Society of Kenya Vs. Attorney General & Another; Mohamed Abdulahi Warsame & Another (Interested Parties) 2019 eKLR are relevant. It observed:
- “This country has a unique constitution that requires justification of every governmental or public action, taken or not taken. On that note, therefore, actions of any state officer or public officer in our Republic, including that of the President, must meet the Constitutional test of justification as an incidence of rule of law and founding value in our constitution... consistent with the above view, are words by Lord Bingham to the effect that ‘rule of law’ requires that ‘Ministers and public officers at all levels exercise the powers conferred on them in good faith, fairly, for purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably”
84. Besides violating of Article 10 (2) (c), the 1st respondent’s actions were also in contravention of the principles of public service enshrined in Article 232 (1) (e) namely: accountability for administrative acts. In *Katiba Institute & another v Attorney General & another* [2020] eKLR, a 3 Judge bench held thus:
- “...There is no doubt in our mind, that values and principles of public service in Article 232 and the *Public Service (Values and Principles) Act*, apply to state corporations and parastatals. Similarly, the founding values and principles in Article 10 bind all state organs, state officers, public officers and all persons whenever they apply or interpret the law or make or implement public policy decisions. The question is; did the impugned appointments comply with the constitutional values and principles?”
85. The expectation of the petitioners to serve their full 3 year term on the Board of Local Government Provident Fund was cut short abruptly when the 1st Respondent removed them without giving them any notice, hearing or assigning reasons for the decision. This was in breach of legitimate expectation to serve their full terms of 3 years as communicated in the gazette notices that had appointed them into



office. Further, it was in violation of Article 236 (b) of the Constitution which protects public officers from dismissal, removal from office, demotion in rank or otherwise subjected to disciplinary action without due process of the law. In Republic v Principle Secretary, Ministry of Transport, Housing and Urban Development Exparte Residents Forum CBO (2019) eKLR the Court held:

“...A procedural legitimate expectation rests on presumption that a public authority will follow a certain procedure in advance of decision being taken. In adjudication legitimate expectation claims the court follows a two-step approach. Firstly, it asks whether the administrator’s actions created a reasonable expectation in the mind of the aggrieved party. If the answer to this question is affirmative, the second question is whether that expectation is legitimate. If the answer to the second question is equally affirmative, the court will hold the administrator to the representation, that is enforce the legitimate expectation. The first step in the analysis has both an objective and a subjective dimension. It is firstly asked whether a reasonable expectation of a certain outcome was created. The representation itself must be precise and specific and most importantly, lawful. Once a reasonable expectation exists the administrator is required to act in accordance with that expectation, except if there is public interest consideration which outweighs the individual’s expectation...”

86. The Court finds that in prematurely revoking the appointments of the Petitioners as Board Members of the Local Government Provident Fund and replacing them with the 1st to the 7th Interested Parties without giving any reasons whatsoever, the 1st Respondent contravened the provisions of Section 4 of the Fair Administrative Actions Act and violated their rights under Article 47 of the Constitution. Further, the action complained of violated Articles 10 (2), 232 and 236 of the Constitution.

iv) Whether The Court Should Grant The Reliefs Sought

87. The remaining issue is whether the petitioners are entitled to the reliefs sought. Article 159 (2) (e) gives this Court authority to ensure that the purpose and principles of this Constitution are protected and promoted hence where the Court finds the Constitution was violated, it has to ensure that it grants an appropriate relief which would ensure the rights under the Constitution are upheld. As was held in the South African case of Hoffmann v South African Airways (CCT17/00) [2000] ZACC 17;

“(45) The determination of appropriate relief...calls for the balancing of the various interests that might be affected by the remedy. The balancing process must at least be guided by the objective, first to address the wrong occasioned by the infringement of the constitutional right; second, to deter future violations; third to make an order that can be complied with; and fourth, of fairness to all those who might be affected by the relief. Invariably, the nature of the right infringed and the nature of the infringement will provide guidance as to the appropriate relief in the particular case...”

88. This Petition having succeeded in its entirety and having regard to the above principles, this court grants the following reliefs:

1. A declaration be and is hereby issued the 1st Respondent action revocation of the appointment of the Petitioners to the Board of Local Government Provident Fund by the 1st Respondent was done in violation of Article 47 of the Constitution of Kenya, Section 4 of the Fair Administrative Action Act (No. 4 of 2015), Articles 10 (2) (c), 232 (e) and 236 of the Constitution hence null and void.



2. An order of certiorari be and is hereby issued quashing the 1st Respondent's Kenya Gazette Notice no. 1407 Vol. CXXV-No. 30 dated 6/2/2023 and Gazette Notice No. 2871 CXXV No. 57 dated 6/3/2023 purporting to revoke the petitioners' appointments as Board Members of the Local Authorities provident Fund.
3. A declaration do and is hereby issued that the 1st Respondent's Kenya Gazette Notice No 1407 dated 6th February, 2023 Volume CXXV No. 30 and Kenya Gazette No. 2871 dated 6th March, 2023 Volume CXXV No. 57 appointing 1st to 7th Interested Party as new Board Members of the Local Authorities Provident Fund in place of the petitioners is null and void ab initio.
4. A conservatory order do and is hereby issued by way of a permanent injunction restraining the 1st and 2nd respondents, their representatives, employees, servants and/or agents or anybody working under them from interfering or replacing the Petitioners as Board members of the Local Authorities Provident Fund for the remainder of their term except in a manner authorised by law.
5. The 1st Respondent shall bear the costs of this Petition.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 19TH DAY OF JANUARY, 2024.

.....

L N MUGAMBI

JUDGE

