



**Okoti & another v National Treasury & 2 others (Constitutional Petition E217 of 2021)  
[2023] KEHC 22367 (KLR) (Constitutional and Human Rights) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22367 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
CONSTITUTIONAL PETITION E217 OF 2021**

**AC MRIMA, J**

**SEPTEMBER 21, 2023**

**BETWEEN**

**OKIYA OMTATA OKOITI ..... 1<sup>ST</sup> PETITIONER  
WANJERI NDERU ..... 2<sup>ND</sup> PETITIONER**

**AND**

**THE NATIONAL TREASURY ..... 1<sup>ST</sup> RESPONDENT  
THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT  
THE PARLIAMENT OF KENYA ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Background:**

1. The dispute, subject of this judgment, emanates from the incompatibility between the National Budget Estimates presented to the National Assembly, 3<sup>rd</sup> Respondent herein, by the National Treasury, 1<sup>st</sup> Respondent herein, and the Budget Policy Statement (BPS) as approved by the National Assembly.
2. A brief recount of events will suffice.
3. On 9<sup>th</sup> October 2020, the National Treasury invited institutions and the general public to submit taxation proposals to be considered in the preparation of the National Budget for the Financial Year 2021/2022.
4. Consideration and consultations of the proposals commenced on 16<sup>th</sup> November, 2020.



5. Subsequently, on 25<sup>th</sup> January 2021, the National Treasury released the Draft 2021 Budget Policy Statement before submission to the Cabinet for approval and subsequent transmission to Parliament.
6. On 11<sup>th</sup> February 2021, the National Treasury submitted to National Assembly, the Budget Policy Statement and the Medium Term Debt Management Strategy (MTDS) 2021/22-2023/24.
7. Pursuant to National Assembly Standing Order 232(5) and (6), the BPS was committed to the Budget and Appropriations Committee as well as the Departmental Committees.
8. Before finalising its report, the Budget and Appropriations Committee consulted the National Treasury, the Central Bank of Kenya, the Commission on Revenue Allocation, Government Ministries, the Parliamentary Service Commission, the Office of the Auditor General, and the general public.
9. On 4<sup>th</sup> March 2021, the National Assembly considered the Report of the Budget and Appropriations Committee on the Budget Policy Statement for 2021/2022 & the Medium Term; and the Medium Term Debt Management Strategy.
10. On the same day, the National Assembly adopted the Report of the Budget and Appropriations Committee.
11. Accordingly, the National Assembly passed the Budget and Appropriations Committee's financial resolutions to the effect that the revenue target for the FY 2021/22 be set at no less than Kshs. 2.034 billion, with ordinary revenue target being set at Kshs. 1,775.6 billion.
12. It also adopted and passed recommendation that the fiscal deficit (including grants) approved by Parliament for the FY 2021/22 is pegged at Kshs. 930.0 billion or 7.5% of GDP, whichever is lower and any increase of the fiscal deficit beyond what has been approved in the BPS for FY 2021/22 will NOT be approved by Parliament.
13. In respect to expenditure ceiling proposals, the National Assembly passed the Budget and Appropriation Committee's recommendation that the Ministerial Expenditure programmes for the FY 2021/22 be limited to no more than Kshs.1,307,435.5 million for recurrent expenditure and Kshs.658,938.3 million for development expenditure.
14. The ceiling for Parliament and the Judiciary was capped at Kshs.37.882.7 billion and Kshs.17.918.3 billion, respectively.
15. The National Assembly further adopted the recommendation that the expenditure ceilings for the FY 2021/2022 shall be binding and the National Treasury should prepare the budget estimates within the foregoing constraints.
16. Contrary to the foregoing, the Cabinet Secretary for the National Treasury and Planning presented to the National Assembly a KShs.3.632 trillion National Budget for FY 2021/2022 which deviated from the mandatory Kshs. 3.023 trillion Budget Policy Statement ceiling approved by Parliament.
17. Okiya Omtatah Okoiti and Wanjeri Nderu, the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners herein respectively were aggrieved by the deviation from the Budget Policy Statement as adopted and passed by the National Assembly.

**The Petition:**

18. Through the Petition dated 10<sup>th</sup> June 2021, supported by the Affidavit and Supplementary Affidavit of Okiya Omtatah Okoiti deposed to on 10<sup>th</sup> June 2021 and 17<sup>th</sup> February 2022, the Petitioners sought to annul the KShs.3.632 trillion National Budget for FY 2021/2022.



19. The Petitioners averred that the National Budget that the Cabinet Secretary for the National Treasury and Planning submitted to Parliament was illegal and unconstitutional for reasons that it deviated from the Budget Policy Statement ceiling approved by Parliament by Kshs. 608.85 billion.
20. It further was the Petitioners' case that the development budget in the Kshs. 3.03 trillion National budget, ought to have been Kshs. 900.9 billion but instead, was allocated Kshs 669.6 billion a figure less than 30% of the national budget contrary to section 15(2)(a) of the [Public Finance Management Act](#).
21. With respect to the Kshs. 3.6 trillion National Budget, the Petitioners posited that the development component ought to have been Kshs. 1.080 trillion.
22. It was the Petitioners further case that since the entire amount in the Budget will be borrowed, it would be contrary section 15(2)(c) of the [Public Finance Management Act](#) which requires all debt to be utilized only on development budget and not on recurrent budget.
23. The Petitioners further faulted the budget for failing to provide for redemptions which according to the Petitioners amounted to failure to provide for the payment of domestic debt.
24. The Petitioners asserted that the non-disclosure of domestic debt repayments and the consequential credit squeeze negated the resolution by Parliament of Budget Policy Statement
25. On the foregoing, the Petitioners posited that the national budget that the Cabinet Secretary for the National Treasury and Planning submitted to Parliament was illegal and unconstitutional and, therefore, null and void.
26. The Petitioners asserted that the totality of the foregoing was in violation of Article 201 of [the Constitution](#), section 25 of the [Public Finance Management Act](#) 2012, the Public Finance Regulation 27(4) and National Assembly Standing Order 232(10).
27. It was their case that the National Treasury exercised powers it did not have in legislative authority, voided the authority and mandate of Parliament, disregarded public views and proposed unrealistic and unreasonable budget in violation of the profiles of separation of power, accountability and transparency in budget making.
28. Based on the foregoing factual and legal matrix, the Petitioners sought the following reliefs: -  
A declaration that;
  1. The Budget Policy Statement is the estimate limit within which a budget must be set and anything outside the limit is illegal and void.
  2. The Kshs.3.632 Trillion National Budget for FY 2021/2022 is unlawful and unconstitutional and, therefore, invalid, null and void.
  3. The 1<sup>st</sup> Respondent should be condemned to pay to the Petitioners the costs of this suit
29. The Petitioner prayed for the following Orders: -
  1. Of prohibition permanently prohibiting the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and their agents and any persons howsoever acting from giving effect howsoever to the KShs.3.632 Trillion National Budget for FY 2021/2022.
  2. Quashing the KShs.3.632 Trillion National Budget for FY 2021/2022.
  3. Compelling the 1<sup>st</sup> Respondent to pay to the Petitioners the costs of this suit.



4. Any other appropriate relief the court may deem just to grant.

#### **The Submissions:**

30. In its written submissions dated 28<sup>th</sup> February 2022, the Petitioners further urged their case that section 16 of the *Public Finance Management Act* bars deviation from fiscal and financial responsibilities but can only occur in the event of major disaster or significant unforeseen event.
31. It was the Petitioners submission that section 25(4)(c) of the PFM Act sets the limits of estimates upon which the budget estimates shall be based.
32. It was submitted that National Assembly Standing Order 232(10) which provides that “the resolution of the House on the Budget Policy Statement shall serve as a basis of the proposed estimates of expenditure for the next financial year and the medium term” was contemptuously breached.
33. The Petitioners further submitted that in an attempt to conceal the fact that 42% of the budget would be financed through debt, the Cabinet Secretary for National Treasury and Planning understated actual expenditure by Kshs. 608.85 billion thereby misleading Parliament and the general public that the country only has a budget deficit of Kshs. 929 billion.
34. The Petitioners denied that COVID-19 was an unforeseen event as to warrant the deviation.
35. In stating that the Kshs. 608.85 billion added to the National Budget was illegal, unconstitutional and, a nullity in law, the decision in *Keroche Industries Limited vs. Kenya Revenue Authority & 5 Others* [2007] 2 KLR 240 was referred to where it was observed: -

.... it is implied that power given to authorities or persons by an Act of Parliament must be exercised fairly, and the Court has the power to reach out where the exercise of that power is unfair and I further endorse Lord Scarman’s quote in *Reg vs. Secretary of State for the Environment Ex Parte Nottingham Shire Country Council* [1986] AC where he stated: “A power which is abused should be treated as a power which has not been lawfully exercised.

36. In the end, the Petitioners submitted that the Respondents should be ordered to pay the costs of this suit, since they were at all material times aware of the law and the procedures to follow while making the national budget but opted to act contrary to them.
37. To buttress the foregoing, the decision in *Erick Okeyo v County Government of Kisumu & 2 Others* [2014] eKLR, was relied on where the issue of costs was discussed as follows: -

On the issue of costs, I consider that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents were engaged in a blatant illegal enterprise that was going to deny the County and its residents enormous resources. It is for this reason that I order that they jointly and severally pay the costs to the Petitioner who has brought this matter to the attention of the public.

#### **The 1<sup>st</sup> Respondent’s case:**

38. The National Treasury challenged the Petition through the Replying Affidavit of Dr. Julius Muia, its Principal Secretary deposed to on 16<sup>th</sup> February 2022.
39. He deposed that according to Sections 7 and 25(7) of the of the PFMA, the National Assembly’s Budget and Appropriation Committee is required to review the Budget Policy Statement and Budget Estimates and make recommendations to the National Assembly.



40. It was his deposition that the 2021 Medium-Term Debt Management Strategy were laid before the National Assembly on 11<sup>th</sup> February 2021 in accordance to section 25(2) of PFMA and thereafter committed to the Budget and Appropriations Committee for deliberation.
41. He deposed that subsequent to the foregoing, consultations were held with the Ministry of Health, Agriculture, Livestock and Co-operatives and Industrialization, Trade and Enterprise Development to review the status of the Big Four Projects.
42. He stated that on 4<sup>th</sup> March 2021 the National Assembly adopted the Report of the Budget and Appropriations Committee in accordance with section 25(7) of PFMA and Standing Order 232 of the National Assembly.
43. It was his case that the Committee conducted public participation in line with Article 221(5) of *the Constitution* and received proposed budget estimates and on 8<sup>th</sup> June 2021, the Committee laid its report before the House and was accordingly adopted.
44. Mr Muia deposed that the Petitioners failed to appreciate the provisions of section 27(6) of PFMA where the National Treasury may deviate from the proposed expenditure provided that an explanation is submitted to the National Assembly.
45. To that end, he stated that the Petitioners misconstrued the National Budget by alleging that the Kshs. 3.632 trillion National Budget was not in line with the Budget Policy Statement.
46. He deposed that the deviation was accounted for as external debt redemption under the Consolidated Fund Service/ the Principal debt repayment amount for the financial year 2021/2022.
47. He deposed that the amount was indicated below the line in the Budget Policy Statement whereas in the budget estimates it appears above the line thereby occasioning the variance in the amounts of the Budget estimate and the budget policy statement.
48. With respect to development expenditure, it was his case that the allegation is unfounded since the National Government's allocation has been above 30% in its total expenditures.
49. He deposed that the National Treasury allocated Kshs. 668.4 billion for the Development Expenditure out of a gross estimate of Kshs. 1.942 trillion of the National government, a total of 34% of the expenditure. He stated that the amount did not include expenditures on Consolidated Fund Services, the County Equitable Share and the Contingency Fund.
50. He deposed that contrary to the Petitioners' allegations; the 2021/2022 budget framework largely took into account the uncertainties brought about by Covid-19 pandemic and followed cautious approach to projections of revenue and provision of deficit financing.
51. It further was his case that numerous financial decisions had taken effect in the financial objectives for the year 2021/2022 and declaring the Budget Estimates as unconstitutional would not be in public interest.

#### **The Submissions:**

52. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed joint written submissions dated 27<sup>th</sup> April 2022.
53. It was submitted that the 2021 Budget Policy Statement and the 2021 Medium-Term Debt Management Strategy were laid before the National Assembly on 11<sup>th</sup> February 2021 pursuant to Section 25(2) of the *Public Finance Management Act* of 2012 and thereafter committed to the Budget and Appropriations Committee for deliberation.



54. It was its case that in consultation with various ministries, the National Treasury discussed critical aspects of the BPS in the context of the state of the economy.
55. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that contrary to the Petitioners allegations, there was evidence that on 4<sup>th</sup> March, 2021 the National Assembly adopted the Report of the Budget and Appropriations Committee on the 2021, Budget Policy Statement and Medium-Term Debt Management Strategy pursuant to Section 25(7) of the Public Finance Management Act of 2012 and in accordance with Standing order 232 of the National Assembly Standing Orders
56. In asserting the position that there was public participation, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that the Budget and Appropriations Committee conducted consultations with the National Treasury, the Parliamentary Service Commission and the Office of the Auditor General and issued Treasury Circulars to Ministries, Departments and Agencies.
57. It was submitted that the Circulars to Ministries, Departments and Agencies gave stakeholders and opportunity to review and make recommendations on the Budget during stakeholder meetings.
58. It was its case that upon approval of the Budget by the Cabinet, the National Treasury published the Budget Review and Outlook Paper which was submitted to the National Assembly and the Senate.
59. To that end, it was submitted that the budget making process is an extensive process that involves consultation between the National Treasury, Parliamentary Budget Office and the Budget and Appropriation Committee of the National Assembly together with experts who generate policy while considering the amount of money that can be raised and in all that, public participation is conducted.
60. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that the Petitioners had not adduced any evidence that public participation was not conducted.
61. As regards variation of Budget Estimates and the BPS, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that the Petitioners made an erroneous assumption that the Budget Policy Statement is cast in stone and cannot be amended or deviated from.
62. It was their case that under Regulation 27(6) of the Public Finance Management Regulations, the National Treasury may deviate from the proposed expenditure ceilings in the BPS, provided that an explanation for the deviation is submitted to the National Assembly.
63. The Respondents rebutted the alleged deviation from the approved Kshs. 3.023 trillion in the BPS by submitting that the Petitioners misconstrued the National Budget.
64. It was their case that contrary to the Petitioners allegations, the Kshs. 608.85 billion alleged deviation by the Petitioners is accounted for as the debt redemption under the Consolidated Fund Service.
65. The Respondents explained that the Kshs 3.023 trillion was exclusive of the Kshs. 608.85 billion that if added onto the indicative expenditure as highlighted in the BPS would total to Kshs. 3.632 trillion.
66. In the end, it was the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' case that they had demonstrated the correlation between the BPS and the entire budgetary cycle and the fact that the Respondents had adhered to the policy requirements, the Constitution and the PFM Act.

### **The 3<sup>rd</sup> Respondent's case:**

67. The National Assembly challenged the Petition through the Replying Affidavit of Michael Sialai, the Clerk to the National Assembly, deposited to on 21<sup>st</sup> September 2021.



68. The 3<sup>rd</sup> Respondent largely made its case as the 1<sup>st</sup> Respondent.
69. Mr. Sialia rebutted the claim that the National Treasury had not adhered to the 1<sup>st</sup> Schedule to the Order Paper; Financial Resolutions which requires the fiscal deficit approved by Parliament to be pegged as 930 Billion of 7.5% of the GDP whichever is lower, by deposing that it broadly adhered to the recommendation, however, in order to acquire additional vaccines expenditures were raised slightly making it 952.9 billion of 7.7% of the GDP.
70. It was his case that the National Treasury gave an explanation to any deviation from the BPS estimates.
71. As regards the claim that there was contravention of section 15(2)(a) of the PFMA which requires a minimum of 30% of National and County government budget to be allocated to development expenditure, Mr Sialai deposed that the Petitioners erroneously presume that the Development Budget is not included in the final budget statement.
72. He deposed that the National Treasury allocated Kshs. 668.4 billion for the Development Expenditure out of a gross total estimate of 1.942 trillion for National Government, a total of 34.4% of the expenditure.
73. He deposed that the foregoing figure did not include development expenditures from the Consolidated Fund, the Contingency Fund for reasons among others that; the interest payment for Development loans is paid out of the Consolidated Fund, that the purpose and usage of monies in Equalization Fund is to enhance development for the provision of basic services and is exclusive for development and no recurrent expenditure if catered for.
74. It therefore was his case that the Petitioners provided an inaccurate calculation of the development allocation out of the total expenditure and erroneously assumed that part of the budget deficit will be used of recurrent expenditure.
75. In conclusion the 3<sup>rd</sup> Respondent urged the Court dismiss the Petition for being without merit and an abuse of Court process.

#### **The Submissions:**

76. The National Assembly filed written submissions dated 31<sup>st</sup> May 2022.
77. It identified the main issue for determination as; whether the Budget for the Financial Year 2021/2022 was illegal and unconstitutional.
78. It was its case that pursuant to Article 95(4)(c) of *the Constitution*, the National Assembly legally and constitutionally undertook its mandate in considering the Budget Policy Statement and the 2021 Medium Term Debt Management Strategy and undertook public participation in the process.
79. It reiterated the position that the it (National Assembly) was guided by the provisions of the *Public Finance Management Act*, and further by Regulation 27(6) of the Public Finance Management (National Government) Regulations, 2015 in allowing the variations in the Budget as presented by the National Treasury.
80. It further asserted that under section 25(8) of the PFMA, the Cabinet Secretary is required to consider the resolutions passed by Parliament in finalizing the budget for the relevant financial year.
81. The 3<sup>rd</sup> Respondent submitted that section 25(8) of the PFMA does not limit powers granted to the National Treasury as the same are not strictly binding.



82. With respect to the assertion that section 27(6) of the PFMA is unconstitutional, the 3<sup>rd</sup> Respondent submitted that the Petitioners neither pleaded nor prayed for such reliefs. It was urged that the same could not be granted.
83. In conclusion, the 3<sup>rd</sup> Respondent called upon the Court to take into consideration the socio-economic backdrop pre-existing the formulation and approval of the 2021/2022 Budget estimates including the Covid-19 Pandemic that dealt an unprecedented direct impact in the distribution of financial resources.
84. The 3<sup>rd</sup> Respondent prayed that the Petition is dismissed with costs.

**Analysis:**

85. On a careful consideration of this matter, there seems to be one main issue for determination. It is whether the budget for the Financial Year 2021/2022 was illegal and unconstitutional. The Court will, therefore, proceed to determine the said issue.
86. Article 201 of *the Constitution* provides for the principles of public finance. They include openness and accountability (including public participation in financial matters); that public money shall be used in a prudent and responsible way; there be responsible financial management and clear fiscal reporting systems; among others.
87. National budgets and the budget-making process is provided for in Articles 220 to 263 of *the Constitution*. The legislation contemplated in Article 220(2) is the *Public Finance Management Act*, No. 18 of 2012 (hereinafter referred to as ‘the PFMA’).
88. According to its preamble, the PMFA is An Act of Parliament to provide for the effective management of public finances by the national and county governments; the oversight responsibility of Parliament and County assemblies; the different responsibilities of Government entities and other bodies, and for connected purposes.
89. Article 221 of *the Constitution* requires that at least two months before the end of each financial year, the Cabinet Secretary responsible for finance shall submit to the National Assembly estimates of the revenue and expenditure of the national government for the next financial year to be tabled in the National Assembly. The article also provides for the process that thereafter follows in the National Assembly.
90. The PMFA variously and comprehensively provides for the details governing the budget-making processes. Pursuant to Section 205 of the PFMA, the Cabinet Secretary has powers to make regulations for the carrying out or giving effect to the PFMA.
91. Pursuant to the above provision, the Cabinet Secretary initiated the regulations which culminated with the Public Finance Management (National Government) Regulations, 2015 vide Legal Notice 34 of 2015 (hereinafter referred to as ‘the Regulations’)
92. The Regulations, as well, supplement the PFMA and also variously provide the details on the diverse processes. For instance, PART III thereof (Regulations 26 to 30 inclusive) provides for Fiscal Strategy and Macro-Economic Framework whereas Part IV (Regulations 31 to 41 inclusive) is on Budget Preparation.
93. Regulation 26, the PFMA requires the Cabinet Secretary to prepare a Budget Policy Statement (hereinafter referred to as ‘the BPS’). The provision goes ahead to state what the BPS will contain and also what items the Cabinet Secretary may not disclose in the BPS and the reasons thereof.



94. Regulation 27 of the PFMA comprehensively provides for the BPS. For avoidance of doubt, the BPS should contain an assessment of the current state of domestic economy by: -
- (a) providing an assessment of the impacts of regional and international economy on the medium macroeconomic framework and its outlook;
  - (b) indicating allocation of available resources between the national and county levels of government and among county governments;
  - (c) providing a macroeconomic framework underlying the budgetary and fiscal policy over the medium term;
  - (d) providing a medium-term fiscal framework defining a top-down aggregate resource envelope;
  - (e) providing a statement of fiscal responsibility principles, as specified in the Act and these Regulations and indicating whether the fiscal strategy adheres to these principles; and
  - (f) providing a summary of programmes that are of national interest for the forthcoming year.
95. The BPS shall also contain a fiscal risk statement, including, any commitments and contingent liabilities not included in the fiscal forecasts, and all other circumstances which may have a material effect on the fiscal and economic forecasts and which have not already been incorporated into the fiscal forecasts as well as information on the losses and outstanding payments of the State Corporations. The BPS is thereafter tabled in Parliament.
96. Once the BPS is adopted by Parliament, it then serves as the basis of expenditure ceilings specified in the fiscal framework. In the event of any deviation, the National Treasury must include a statement explaining the deviation to the National Assembly.
97. In this case, the Cabinet Secretary prepared the BPS for the budget for the Financial Year 2021/2022. It was tabled before National Assembly and was accordingly adopted. The BPS was approved at Kshs. 3.023 trillion.
98. However, the Cabinet Secretary for the National Treasury and Planning presented to the National Assembly a KShs.3.632 trillion National Budget for FY 2021/2022. The budget deviated from the BPS by Kshs. 609 billion.
99. According to the Respondents, the deviation was explained to the National Assembly pursuant to Regulation 27(6) of the PMFA and the explanation was duly considered, allowed and adopted.
100. The Respondents alluded that the deviation was necessitated by the socio-economic backdrop pre-existing the formulation and approval of the 2021/2022 budget estimates including the Covid-19 Pandemic that dealt an unprecedented direct impact in the distribution of financial resources.
101. The Petitioners did not agree with the reasons given. They, however, did not given an account of how the consequential issues raised by the Respondents as the basis of the deviation were to fit within the BPS.
102. On the basis of the foregoing, this Court finds that the Respondents complied with the law in tabling an explanation on the deviation in the National Assembly. As said, the deviation was debated and adopted by the House.
103. There was another contention on the budget estimates presented to the House. It was argued that given that national budget estimates stood at the Kshs. 3.03 trillion, then pursuant to Section 15(2)(a) of the



PFMA, Kshs. 900.9 billion, being at least 30% of the national budget ought to have been allocated as development expenditure. However, the sum of Kshs 669.6 billion was instead allocated.

104. Responding to the issue, the Respondents faulted the Petitioners for not clearly understanding the estimates at hand. It was explained that the National Treasury allocated Kshs. 668.4 billion for the Development Expenditure out of a gross total estimate of 1.942 trillion for National Government, a total of 34.4% of the expenditure. Further, that the foregoing figure did not include development expenditures from the Consolidated Fund and the Contingency Fund for reasons among others that; the interest payment for Development loans is paid out of the Consolidated Fund, that the purpose and usage of monies in Equalization Fund is to enhance development for the provision of basic services and is exclusive for development and no recurrent expenditure if catered for.
105. The Petitioners did not fault the above reasoning.
106. Having considered the reasons alluded above, this Court finds that the development expenditure did not contravene Section 15(2)(a) of the PFMA.
107. Regarding an argument by the Petitioners that there was no disclosure of the domestic debt repayments and that the consequential credit squeeze negated the resolution by Parliament in the BPS, the Respondents explained that the deviation, which has been considered above, accounted for the debt redemption under the Consolidated Fund Service/the Principal debt repayment amount for the financial year 2021/2022.
108. Therefore, the budget estimates took care of the debts repayments since the Petitioners raised no further rejoinder to the issue.
109. Having considered the issues raised by the Petitioners against the budget estimates for the FY 2021/2022 and finding that the processes did not infringe the Constitution and the law, this Court finds that the Petition cannot be sustained.
110. Consequently, the Petition is hereby dismissed with no orders as to costs since this is a public interest litigation.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2023.**

**A. C. MRIMA**

**JUDGE**

Judgment virtually delivered in the presence of:

N/A for Petitioners

N/A for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

Miss Mariya for Mr. Kuoni, Learned Counsel for the 3<sup>rd</sup> Respondent.

Regina/Chemutai – Court Assistants.

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