



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
PETITION NO E8 OF 2020

THE COUNTY ASSEMBLY OF SERVICE BOARD OF WEST POKOT.....PETITIONER

VERSUS

THE GOVERNOR COUNTY GOVERNMENT OF WEST POKOT.....1ST RESPONDENT

THE COUNTY GOVERNMENT OF WEST POKOT.....2ND RESPONDENT

THE CENTRAL BANK OF KENYA.....3RD RESPONDENT

THE CONTROLLER OF BUDGET.....4TH RESPONDENT

RULING

The case for petitioner

Pursuant to the provisions of Article 23 of the Constitution of Kenya, Rules 23 and 24 of the Constitution of Kenya (Protection of Rights & Fundamental Freedoms) Practice and Procedure Rules and all other enabling provisions of the law, the petitioner, seeks the following orders.

- 1) *spent*
- 2) an interlocutory mandatory injunction to issue compelling the 3rd respondent to forthwith reinstate and/or activate the signatories approved by the petitioner's County Assembly Service Board on 29th July 2020 pending the hearing and determination of both this application and the petition herein.
- 3) an order of a temporary injunction to issue restraining the 1st and 2nd respondents by themselves, their agents or any other person whatsoever from usurping the powers of the petitioner or from interfering, controlling or directing the affairs and business of the petitioner pending the hearing and determination of both this application and the petition.
- 4) an order to make provision for costs.

The application is supported by both the 16 grounds that are set out on the face of the notice of motion and a 28 supporting affidavit of Catherine Mukenyang, who is the Speaker of the County Assembly of West Pokot.

The major grounds are as follows. The petitioner's clerk, who was also the accounting officer and signatory of the petitioner's accounts was suspended. The suspended clerk refused to hand over despite several reminders. As a result, the petitioner was forced to compel him to hand over through the court vide Misc. Application No. 7 of 2020 with the court ruling that the refusal by the clerk to hand over, amounted to gross misconduct and that the petitioner had power to discipline him.

Furthermore, following the advice of the 3rd respondent, the petitioner's County Assembly Service Board directed the 2nd authorizer/signatory to fill out mandate forms introducing new signatories and authorizers for the petitioner's account Nos. 1000243333 and 1000433377 which were held by the 3rd respondent. Additionally, following further advice from the 3rd respondent, the 2nd authorizer/signatory and the deputy acting clerk physically presented themselves at the premises of the 3rd respondent to sign off the certificate of the balance and to conduct the hand over. The handing over process was completed by signing a certificate of balance by the deputy acting Clerk and the suspended clerk. As a result, the signatories approved by the petitioner's County Assembly Service Board on 29th July 2020 were accepted by the 3rd respondent.

Despite the approval by the Controller of Budget, the 1st and 2nd respondents refused to authorize the withdrawal from the County Revenue Fund, an action that has gravely affected the petitioner's operations. As a result, the petitioner was unable to pay salaries for the months of July to October 2020 until an interested party intervened and commanded the CEC Finance and Economic Planning to act or else the Executive expenditure would not be approved.

As a result of the foregoing, the CEC Finance and Economic Planning, Ms Christine Apakoreng, acted ultra vires by appointing signatories for the petitioner's accounts held by the 3rd respondent contrary to the law. Ms Christine Apakoreng then went ahead without any colour of right wrote a letter to the Office of the Controller of Budget and listed some county staff as signatories of the petitioner's account Nos. 1000243333 and 1000433377.

Additionally, the 3rd respondent acted on the letter of the CEC Finance and Economic Planning, Ms Christine Apakoreng and the authorized mandate to deactivate/suspend the petitioner's authorized signatories of account Nos. 1000243333 and 1000433377 held by it.

Despite several letters by the petitioner requesting the 3rd respondent to reinstate/activate the signatories who were illegally deactivated by the 2nd respondent, the 3rd respondent has refused, ignored and/or neglected to do so to the detriment of the petitioner. Consequently, the petitioner cannot withdrawal funds to pay allowances to its members, staff and service providers thus exposing it to the risks of being sued.

The conduct of the respondents has prevented the petitioner from performing other financial obligations within the confines of the County Government Act, the County Government Services Act, the Constitution and the Public Finance Management Act 2012. The said conduct has further paralyzed the operations of the various critical Committees of the petitioner created under the County Assembly Standing Orders mandated to exercise oversight roles on the 2nd respondent with the result that the tax payers of West Pokot County are adversely affected as there is no accountability by the 2nd respondent.

Furthermore, the respondents are misusing and abusing their powers to settle their own scores rather than rendering service to the people of West Pokot. The respondents have deliberately set out to cripple the activities of the petitioner in order to bring its operations to a halt.

The petitioner has stated that unless the court intervenes, the respondents will continue to violate the Constitution and other laws to the prejudice of the people of West Pokot. The respondents will not suffer any prejudice if the orders sought are granted.

In addition to the grounds in support of the application, the application is supported by a 29 paragraphs supporting affidavit of the petitioner's speaker and chairperson (Catherine Mukenyang) of the County Assembly Service Board, whose major averments are as follows.

On 4th July 2018 David Karugutiang was appointed as the substantive clerk of West Pokot County Assembly on contract in accordance with section 13 of the County Government Act and section 18 of the County Assembly Services Act. Furthermore, on 18th May 2017 Daniel Kakosom Dapamuke and Lucia Chenanga were appointed as the Deputy Clerk (Administration) and as Deputy Clerk (Finance), respectively. Problems emerged in terms of performance as the deputy clerks considered themselves superior to the substantive clerk and sabotaged his work. Due to this, the petitioner conducted a comprehensive review of its operations, performance analysis and the need for efficient service delivery. As a result, the petitioner abolished the offices of deputy clerk (administration) and deputy clerk (finance) and established new offices in accordance with article 235 (1) of the 2010 Constitution, section 12 of the County Government Act No 17 of 2012 and section 24 of the County Assembly Services Act No 24 of 2017.

Furthermore, the deponent has averred that Daniel Kakosom Dapamuka and Lucia Chenanga were re-designated to new positions as Directorate of Legislative and Procedural Services and Directorate Budget and Fiscal Analysis Services. The deponent has further averred that Daniel Kakosom Dapamuka was later transferred to the Directorate of Administration and support services to hold the position of director administration and support services. Notwithstanding this re-designation to the new positions, Daniel Kakosom Dapamuka continued to be a 2nd authorized/signatory of the petitioner's accounts held by the 3rd respondent, which is in line with section 21 of the County Assembly Services Act No 24 of 2017. These provisions allow any officer to carry such functions in the absence of the deputy clerk.

The deponent has deposed that the 1st respondent attempted to change political leadership of the petitioner by marshalling members of the petitioner from KANU to oust the leader of the majority party and chief whip. This attempt was rejected by the KANU party which led to a lengthened political tussle between the 1st respondent and members of the petitioner who resisted the changes.

The deponent further deposed that when the politics ran out of hand, the substantive clerk (David Karugutiang) decided to take the law into his own hands and attempted to force the rejected changes. He ran a smear campaign, leaked confidential documents, held political rallies in support of the changes amongst other activities. As a result, he was suspended on grounds of gross misconduct, incompetence, violation of the provisions of chapter six of the Constitution and violation of the provisions of the County Assembly Services Act. The petitioner then appointed Benedict Toroitich Kiach as acting deputy clerk in accordance with section 21 of the County Assembly Services Act, which permits the appointed deputy clerk to exercise the functions of the office of substantive clerk if for any reason the clerk is unable to exercise the functions of his office.

The deponent has further deposed that the said suspended clerk was the chief administrative officer responsible for the petitioner's day to day running, the secretary to the petitioner's County Assembly Service Board and also served as the accounting officer of the petitioner. Additionally, he was the mandate holder of the petitioner's account held by the respondent.

Furthermore, the deponent has averred that the suspended clerk refused to hand over despite several attempts and reminders, forcing the petitioner to file a case in court to force him to do so. The court by way of obiter dictum found that the conduct of the clerk amounted to gross misconduct that warranted disciplinary measures to be taken against him. That following advice from the 3rd respondent, the petitioner directed Daniel Kakosom Dapamuka to fill out mandate forms introducing the new signatories and authorizers for the petitioner's account

Nos. 1000243333 and 1000433377 held by the 3rd respondent.

The deponent has deposed that the 3rd respondent required Daniel Kakosom Dapamuka (the second authorizer/signatory) and the deputy clerk to physically present themselves at their premises to sign off the certificate of balance at the handover. As a result, they complied and the process was completed by signing off the certificate of balance, the new mandates were accepted by the 3rd respondent. The deponent has annexed a copy of the certificate of balance from the Central Bank of Kenya signed by Daniel Kakosom Dapamuka and Benedict Torotich Kiach together with officials from the Central Bank of Kenya.

The deponent has also deposed that despite the approval by the Controller of Budget, the 1st and 2nd respondents refused to sign form C's to authorize withdrawal of the funds from the County Revenue Fund, an action that gravely affected the operations of the petitioner. As a result, the petitioner delayed in paying salaries for the months of July to October 2020 until the Controller of Budget intervened and commanded the CEC Finance and Economic Planning, Ms Christine Apakoreng to act or else the executive expenditure would not be approved. As a result of that threat she acted and salaries for July and August were released.

The deponent has further deposed that on the 9th October 2020, **the CEC Finance and Economic Planning** (Ms Christine Apakoreng) acted ultra vires by appointing the petitioner's signatories to the Office of Controller of Budget and listed some county assembly staff as signatories of the petitioner's account Nos. 1000243333 and 1000433377 held by the 3rd respondent.

Furthermore, the deponent has deposed that Daniel Kakosom Dapamuka, while purporting to be the deputy clerk appended his signature on a correspondence addressed to the Controller of Budget, while fully aware that he was not holding the said position. Further, he colluded with the CEC Finance and Economic Planning (Ms Christine Apakoreng) and caused the petitioner's authorized signatories at the Central Bank of Kenya to be deactivated or suspended. As a result, Daniel Kakosom Dapamuka was interdicted on 23rd October 2020.

Furthermore, the deponent has deposed that despite several letters requesting the Central Bank of Kenya to activate the authorized signatories, the 3rd respondent has refused, ignored and/or neglected to do so to the detriment of the petitioner.

Finally, the deponent has replicated matters that are already set out as grounds in support of the application, which I do not need to reproduce herein.

The case for the 3rd respondent.

The 3rd respondent through its general counsel (Kennedy Kaunda Abuga) has filed a 52 paragraphs replying affidavit in opposition to the application.

The major averments in the above are as follows.

The 3rd respondent is established under article 231 (1) of the 2010 Constitution of Kenya. As a bank it is tasked with formulating monetary policy, promoting price stability and issuance of currency. Under section 3 (3) of the Central Bank Act, the Central Bank of Kenya (CBK) is mandated to act as the banker, advisor to, and fiscal agent of the National and County Governments. The petitioner operates two accounts namely a recurrent account (being No. 1000243333) and a development account (being account No. 1000433377).

The recurrent account is currently operational in the CBK'S internet banking (IB) system and has active mandates of duly appointed and authorized officials, who have been making payments for salaries and other miscellaneous payments with the last payments having been made on 3/11/2020.

The payments from the development account were last made on 29/7/2020 leaving a nil balance and no further deposits have been made to this account.

The deponent has deposed that the Public Finance Management Act No. 18 of 2012 (PFMA), has provisions for the effective management of public finances by the national and county governments. Additionally, it has also provided for oversight responsibility to Parliament and the County Assemblies. As a result of this PFMA, all accounts of the national and county governments and their entities must strictly be operated as required by its provisions.

Following advice of his counsel which he believed, the deponent has deposed that sections 13 (1) and (4) of the County Governments Act, No 17 of 2012, do establish the office of the clerk to the County Assembly and designates him as the authorized officer. Furthermore, section 13 (3) of the County Governments Act as read with section 19 of the County Assemblies Services Act, No. 24 of 2017, sets out the functions of the Clerk of the Assembly as follows. First, he is secretary of the County Assembly Services Board. Second, he is the chief administrative officer of the County Assembly. Third, he is responsible for the day to day management and functioning of the county assembly.

Furthermore, the section 148 (4) of the PFMA designates the clerk to the assembly as the accounting officer of the County Assembly. And in that capacity the clerk is required by section 149 (1) of the PFMA to ensure that all County Assembly resources are not only lawfully used and authorized but he is required to ensure that they are effectively, efficiently, economically and transparently used.

In addition to the foregoing, all speakers of the county assemblies know that the clerk of the County Assembly is the sole mandate holder of all County Assembly accounts in Kenya, following the development of a standard operating procedure (SOP) by CBK; which embody the principles of public finance management as set out in article 201(a), (d) and (e) of the 2010 Constitution of Kenya.

Furthermore, more importantly CBK developed a standard operating procedure which requires all communications to the CBK in respect of mandate and signatories to the County Assembly accounts to be done by the clerk of the county assembly. He is also the sole official with a mandate to operate and issue instructions in relation to the bank accounts of the county assembly.

The deponent has deposed that the CBK received many letters with confusing and conflicting instructions on the mandates in respect of the County Assembly accounts, with the risk of weakening controls resulting in potential loss of public funds.

Furthermore, the deponent has deposed that on 20/8/2020 the Speaker and Chairperson of the County Assembly Service Board (Hon Catherine Mukenyang), informed CBK that its service board had pursuant to section 21 of the County Assemblies Services Act 2017, appointed Mr. Daniel Dapamuka, who was a deputy clerk-Administration and an alternate accounting officer and authorizer as the acting clerk to take over from David Karugutiang, who was on suspension. Since Mr. Dapamuka's mandate already existed in CBK as an alternate accounting officer and authorizer, the CBK elevated Mr. Dapamuka's mandate to that of the clerk and mandate holder of WPCA accounts at the CBK.

On 4/9/2020 the CBK received a notification of the changes in the office of the 2nd respondent's CECM-F, in which Mrs Christine Apakoreng replaced Mr. Loile as the new CECM-F. The CBK ascertained and found that the changes were procedurally made and duly onboarded Mrs. Apakoreng to be the new CECM-F and a mandate holder of the 2nd respondent's accounts at the CBK.

On 30/9/2020 the petitioner's speaker sought the CBK'S intervention in a dispute between the petitioner and the 2nd respondent's CECM-F (Mrs Apakoreng), to approve new funding allocation for the County Assembly's accounts following approval by the controller of budget, the interested party herein. The CBK declined to act since the matter was outside its mandate.

Again on 14/10/2020, the CBK received a letter from the clerk, Mr. Dapamuke, withdrawing authorizer/signatory mandates and IB access rights for four (4) officers of the West Pokot Assembly. After satisfying itself that those instructions were validly issued by the legitimate accounting officer, the CBK proceeded to effect those changes. Following the withdrawal of the authorizer/signatory mandates and IB access rights for the four officers, the speaker wrote a letter to the CBK Governor and the Ag. Director, Banking and Payment Services Department of the CBK protesting the withdrawal of the authorizer/signatory mandates and IB access rights for the four officers. The speaker alleged that the withdrawal was irregular as they had not been sanctioned and approved by the County Assembly Services Board. The speaker requested the CBK to reinstate the mandates that had been withdrawn on the instructions of Mr. Dapamuke.

The CBK was unable to act on the speaker's request, because she is not the accounting officer and has no mandate to issue instructions in respect of the petitioner's accounts at the CBK.

The deponent is aware that the speaker and a Mr. Benedict Torotich called the CBK, demanded and pressurized the CBK to reinstate the mandates to enable payments of staff and MCA's salaries and allowances. The CBK declined to accede to the request since it was following the due process and was outside its mandate. This refusal notwithstanding, the CBK engaged the clerk, Mr. Dapamuke to facilitate internet banking access to their mandated staff who then paid the pending salaries on 22/10/2020.

On 26/10/2020, the CBK received another letter from the speaker, advising that Mr. Dapamuke and two other signatories and mandate holders to the petitioner's accounts at the CBK, be interdicted. At the same time the speaker also requested BPS to reactivate the other authorized signatories that were earlier removed by Mr. Dapamuke. CBK declined to act on the request since the speaker is not the clerk cum accounting officer of the petitioner.

Furthermore, on 5/11/2020 the CBK received a letter from Mr. Dapamuke, in which he informed CBK that the substantive clerk was still on suspension and that he was still the acting clerk and accounting officer of the County Assembly. Mr. Dapamuke further informed CBK that the interdictions communicated to the CBK by the speaker on 26/10/2020 had been stayed or suspended by the Employment and Labour Relations Court (ELRC) sitting at Eldoret in ELRC Petition No. 21 of 2020, Daniel Kakasom Dapamuke & Another v The Secretary, West Pokot County Assembly & Another.

Additionally, the CBK received the order issued by the Employment and Labour Relations Court (Abuodha, J) and noted that the court issued a conservatory order which suspended the petitioner's advertisement for the position of deputy clerk issued on 23/10/2020. The court further restrained the petitioner from arbitrarily transferring, deploying, suspending, or demoting the petitioners from their positions as the substantive deputy clerks for administration and finance respectively.

Furthermore, the CBK has been working with the duly mandated clerk, Daniel Kakasom Dapamuke until he is lawfully removed from office and the orders of the court set aside and a substantive accounting officer and mandate holder of the County Assembly has been appointed.

The CBK continues to act in line within the provisions of the law and has continued to act on the requests and instructions from the account mandate holder. *"In any event, the County Assembly has sufficient number of authorized account operators and there should be no reasons why the account should not operate smoothly as it has been."*

The deponent has deposed that *"it is not true that the County Assembly operations have been halted or stopped as the accounts continue to operate smoothly as payments are lined up in the Internet Banking system to be effected once the accounts have been funded as required."*

Furthermore, the deponent has deposed that the CBK has no interest in the matter and is only discharging its constitutional and statutory obligations.

Finally, the deponent has prayed that the application be dismissed with costs to the 3rd respondent.

The applicable law.

The law regarding the grant of an interlocutory mandatory injunction has been set out persuasively in the case of *New Ocean Transport Ltd & Another v Anwar Mohamed Bayusuf Ltd [2014] e-KLR*, in which the Court of Appeal in part pronounced itself in the following terms: “... It is granted in cases in which monetary compensation affords an inadequate remedy to an injured party. See *Halisburys Laws of England 3rd edition, vol. 21 at pg.343*. Basically, there are 2 types of injunctions: positive and negative. The positive injunction would direct a party to do something whereas a negative one will restrain such a person from doing something. Among the positive injunctions will be mandatory injunction. This injunction orders some act to be done. Part of this is the restorative injunction being sought by the applicants in the instant. This type of injunction requires the person against whom it is directed to undo a wrongful act, to restore the status quo ante so that the damage does not continue. Then there is the mandatory injunction per se which compels a party to carry out some positive act to remedy a wrongful omission....”

Furthermore, for an interlocutory mandatory injunction to be granted at an interlocutory application as well as at the hearing the applicant must demonstrate the existence of special circumstances and that in the absence of special circumstances, such an injunction will not normally be granted according to the decision of the Court of Appeal in *Nation Media Group & 2 Others v John Harun Mwau [2014] e-KLR*. In addition to the requirement of demonstrating the existence of special and exceptional circumstances, such an injunction may only be granted in the clearest cases. Finally, the Court of Appeal stated that a different and a higher standard than that in prohibitory injunctions is required before an interlocutory mandatory injunction is granted.

I further find as persuasive the decision of the court in *County Assembly of Machakos v Governor, Machakos County & 4 Others [2018] e-KLR*, in which it was held that the public interest in the case required the continued of the county assembly activities and an order was issued compelling the release of funds to the county assembly. In that case the county executive had refused to disburse funds allocated to the county assembly. This decision was cited by both parties.

Finally, I find as unpersuasive the decision of the court in *Giella v Cassman Brown [1973] EA 358* because it involves claims by private individuals. The instant application involves public interest and in that regard, it is distinguishable from the cited case by the petitioner.

Issues for determination

I have considered the detailed affidavits of the parties. I have also considered their written submissions and the authorities cited by their counsel. And being guided by the foregoing applicable law, I find the following to be the issues for determination.

- 1) Whether the petitioner has made out a case for the grant of an interim mandatory injunction to issue compelling the 3rd respondent to forthwith reinstate and/or activate the signatories approved by the petitioner’s County Assembly Service Board on 29th July 2020 pending the hearing and determination of both this application and the petition.
- 2) Whether the petitioner has made out a case for the grant of an order of a temporary injunction to issue restraining the 1st and 2nd respondents by themselves, their agents or any other person whatsoever from usurping the powers of the petitioner or from interfering, controlling or directing the affairs and business of the petitioner pending the hearing and determination of both this application and the petition.
- 3) Who bears the costs of this application?

Issue 1

The issue is whether the petitioner has produced evidence to warrant the grant of the order sought in its favour. The evidence of the petitioner in this regard is that on 18th May 2017 Daniel Kakosom Dapamuke and Lucia Chenanga were appointed as the Deputy Clerk (Administration) and as Deputy Clerk (Finance), respectively. I find that following the suspension of David Karugutiang, (who was the substantive holder of the office of clerk to the petitioner), on grounds of gross misconduct, incompetence, violation of the provisions of chapter six of the Constitution and violation of the provisions of the County Assembly Services Act; Daniel Kakosom Dapamuka (the second authorizer/signatory) and the deputy clerk were accepted as mandate holders authorized to operate the two accounts of the petitioner namely a recurrent account (being No. 1000243333) and a development account (being account No. 1000433377), that were held by the 3rd respondent.

I further find as credible that on 20/8/2020 the Speaker and chairperson of the County Assembly Service Board (Hon Catherine Mukenyang), informed CBK that its service board had pursuant to section 21 of the County Assemblies Services Act 2017, appointed Mr. Daniel Dapamuke, who was a deputy clerk-Administration and an alternate accounting officer and authorizer as the acting clerk to take over from David Karugutiang, who was on suspension. Since Mr. Daniel Kakosom Dapamuke’s mandate already existed in CBK as an alternate accounting officer and authorizer, the CBK elevated Mr. Daniel Kakasome Dapamuke’s mandate to that of the clerk and mandate holder of West Pokot County Assembly (WPCA) accounts at the Central Bank of Kenya (CBK).

I find as incredible the averment of the petitioner that Daniel Kakosom Dapamuka was not a signatory and approver to the two said bank accounts of the petitioner.

Furthermore, I find as credible that on 14/10/2020, CBK received lawful instructions from Mr. Daniel Kakosom Dapamuke, withdrawing authorizer/signatory mandates and internet access (IB) rights for four (4) officers of the West Pokot County Assembly. The reason being that the said Daniel Kakosom Dapamuka was the accounting officer in terms of section 148 (4) of the Public Finance Management Act, 2012 which reads as follows: “*The clerk to the county assembly shall be the accounting officer of the county assembly.*”

Additionally, the accounting officer in terms of section 148 (2) of the said Public Finance Management Act, is also the person responsible for the administration of a county government entity and in his capacity as the accounting officer, he is responsible for managing the finances of that entity.

The submission of the petitioner that the said Daniel Kakosom Dapamuka had been interdicted did not change the position in law; since the interdiction is an internal matter for West Pokot County Assembly. For the interdiction to be operational, it must be communicated to the CBK and a proper handing over had to be done between the outgoing and the incoming officers. This had not been done.

I further find that before the handing over was done, following the interdiction of Daniel Kakosom Dapamuka, the latter obtained a conservatory order from Mr. Justice Abuodha in charge of the Employment and Labour Relations Court (ELRC) sitting at Eldoret in *ELRC Petition No. 21 of 2020, Daniel Kakosom Dapamuke & Another v The Secretary, West Pokot County Assembly & Another*, that stayed or suspended his interdiction, by the petitioner. The said order also suspended the petitioner's advertisement for the position of deputy clerk issued on 23/10/2020. That court further restrained the petitioner from arbitrarily transferring, deploying, suspending, or demoting the petitioners including Daniel Kakosom Dapamuka.

In respect of the above court order, counsel for the petitioner has submitted that since the petitioner had approved the signatories to operate the accounts of the petitioner, the 3rd respondent had no justification to approve the illegal changes made by the said Daniel Kakosom Dapamuke.

In response to the immediate foregoing submission, counsel for the 3rd respondent submitted that no communication was received by CBK that there were changes in the petitioners account mandates. Additionally, CBK was not told that there were changes to the designation of officers in the petitioner's service board or that there was a new accounting officer whose details had to be taken on board by the CBK.

I have considered these two immediate rival submissions. As a result, I find that CBK acted on the letter of the accounting officer (Daniel Kakosom Dapamuke), who was already on board. Furthermore, the said accounting officer had already obtained a conservatory order from the Employment and Labour Relations Court (Abuodha, J) (ELRC) sitting at Eldoret in *ELRC Petition No. 21 of 2020, Daniel Kakosom Dapamuke & Another v The Secretary, West Pokot County Assembly & Another*; which stayed or suspended his interdiction by the petitioner. This order bound the petitioner and the 1st and 2nd respondents. It is therefore not correct in law for counsel for the petitioner to submit that the said order was obtained by deceit and is inconsequential. The petitioner's counsel needs to be reminded that court orders must be respected and complied with. Non-compliance with court orders might lead to chaos. It is therefore in the interest of orderliness, that court orders are complied with, even if one vehemently disagrees with them. If the 1st and 2nd respondents were aggrieved by the said order, they had the opportunity to challenge it either by way of review or by way of an appeal to the Court of Appeal. They did not do so and cannot now be heard to submit that the court order was obtained by deceit. Furthermore, counsel for the petitioner submits that the court order did not affirm the role of the said Daniel Kakosom Dapamuka, as a signatory to the accounts of the petitioner; as there were procedural changes on the signatories made and approved by the petitioner and the County Assembly Service Board, which the 3rd respondent knew. She submits that in any event the said court order lapsed on 23rd November 2020 and the court did not extend it. Counsel recognizes the validity of the court order and at the same time submits that it was obtained by deceit. Counsel cannot in law approbate and reprobate at the same time. I therefore reject her submissions for lacking in merit.

Counsel for the petitioner has also submitted that the operations of the various critical committees of the petitioner have been paralyzed by the conduct of the respondents, which has adversely affected the tax payers in the county. These submissions are not borne out by the evidence on record. In this regard, I find as credible the affidavit of the CBK through its general counsel (Kennedy Kaunda Abuga) that the operations of the two bank accounts held by CBK were operating normally, because the two accounts had enough signatories and that the CBK did not have any payments to date; since the mandated signatories and approvers had been operational throughout. Based on the material before the court, I find no merit in the submission of counsel, which I hereby dismiss.

Furthermore, I also reject the submission of counsel for the petitioner that in carrying out his duties the accounting officer/clerk is under the control of the Speaker, who is the chairperson of the County Assembly Service Board as set out in section 20 (3) of the County Assembly Services Act, 2017. The clerk/accounting officer in the discharge of his duties is not operationally under the control of the Speaker; because he has first and foremost to comply with the Constitution and other statutory laws. He is a servant of the law. This is very clear from the provisions of section 20 (3) of the County Assembly Services Act, 2017, which reads as follows:

“Subject to this Act and any other written law, the clerk, shall, in carrying out and exercising the power conferred on him or her by the Standing Orders and practices of the county assembly, be under the direction of the Speaker.”

In addition to the foregoing, the clerk/accounting officer is also subject to any court order that has been served upon him or which has come to his knowledge. The speaker and the clerk/accounting officer are servants of the Constitution and other laws. In my view both the Speaker and the clerk are bound to comply with court orders such as the orders issued by the Employment and Labour Relations Court at Eldoret, upon the application of Daniel Kakosom Dapamuka.

However, the speaker can perfectly issue directions that the clerk/accounting officer should report on duty in time and expedite the tasks assigned to him such as payments of debts. Even the directions that the Speaker may give should not contravene the Constitution and other laws.

On the evidence, I find that the petitioner has not discharged the burden cast upon it of making out a case for the grant of an interlocutory mandatory injunction to compel the 3rd respondent. Additionally, the petitioner has not demonstrated the existence of special circumstances or exceptional and clear circumstances, which according to the decision of the Court of Appeal in *Nation Media Group & 2 Others v John Harun Mwau, supra*, must be demonstrated before such an order is granted.

Furthermore, the petitioner has not proved that the public interest in the matter warranted the grant of an interlocutory mandatory injunction as was held in the case of the *County Assembly of Machakos v Governor, Machakos County & 4 Others, supra*, in which the court issued an order compelling the release of funds to the county assembly to ensure the continuation of the county assembly activities; which order was dictated by the public interest. The petitioner has not demonstrated the existence of a similar public interest in the instant application and in that regard the current application is distinguishable.

The upshot of the foregoing is that the prayer for an interlocutory mandatory injunction fails and is hereby dismissed.

Issue 2

The negative temporary injunction sought is directed against the 1st and 2nd respondents only. The 3rd respondent is not sought to be restrained by this negative temporary injunction.

The evidence of the petitioner in support of the negative injunction is that even after the Controller of Budget had approved the withdrawal funds from the County Revenue Fund, the 1st and 2nd respondents refused to sign form C's to authorize withdrawal of the funds from that Fund. This refusal gravely affected the operations of the petitioner. As a result, the petitioner delayed in paying salaries for the months of July to October 2020 until the Controller of Budget intervened and commanded the CEC Finance and Economic Planning, Ms Christine Apakoreng to act or else the executive expenditure would not be approved. As a result of that threat, she acted and salaries for July and August were released.

The deponent (Speaker and Chairperson) has further deposed that on the 9th October 2020, the CEC Finance and Economic Planning (Ms Christine Apakoreng) acted ultra vires by appointing the petitioner's signatories to the Office of Controller of Budget and listed some county assembly staff as signatories of the petitioner's account Nos. 1000243333 and 1000433377 held by the 3rd respondent. The affidavit evidence of the petitioner's Speaker and Chairperson is supported by that of the 3rd respondent's general counsel (Kennedy Kaunda Abuga) that the CBK intervened through Daniel Kakosomo Dapakome. As a result of that intervention the salary payments were released.

The 1st and 2nd respondents did not file any replying affidavit in opposition to the application.

The foregoing evidence is not rebutted by the 1st and 2nd respondents. I find that this piece of evidence to be credible.

The submissions of counsel for the petitioner in this regard is that Christine Apakoreng, was not appointed by the County Assembly Service Board. I find that this submission appears to have merit, but it ignores one fundamental fact; which is that the 3rd respondent is not in law concerned with the procedures of appointing the accounting officer of the petitioner; which are matters of internal concern to the petitioner. I find on the evidence that the 3rd respondent followed the law in continuing to recognize Daniel Kakosomo Dapakome as the legitimate accounting officer; since his mandate had not been terminated and communicated to the CBK as required. Furthermore, I find on the evidence that the 3rd respondent avoided to be dragged into the internal affairs of the 1st and 2nd respondents.

On the other hand, I find that the 1st and 2nd respondents without colour of right interfered in the running of the affairs of the petitioner in the following ways. First, in appointing the CEC Finance and Economic Planning (Ms Christine Apakoreng) by as the petitioner's signatories to the Office of Controller of Budget and listed some county assembly staff as signatories of the petitioner's account Nos. 1000243333 and 1000433377, which accounts were held by the 3rd respondent. Second, in refusing to sign form C's; which forms were required to authorize withdrawal of the funds from the County Revenue Fund. It is through the intervention of the 3rd and 4th respondent that funds from that fund were released.

I also find merit in the submissions of counsel for the petitioner that the 1st and 2nd respondents intended to cripple the oversight responsibility of the petitioner over both the 1st and 2nd respondents.

It is the constitutional function of the petitioner to see to it that monies allocated to the 1st and 2nd respondents are spent transparently, economically and frugally for the benefit of the people of West Pokot County. It cannot discharge this function effectively if it is support service board namely the County Assembly Service Board of West Pokot is under the control of the 1st and 2nd respondents.

It is equally important to point out that the executive branch herein represented by the 1st and 2nd respondents is barred from making appointments to the offices of the petitioner. The reason for this is that each branch is required to be operationally independent; but this does not mean that they are not interdependent. In the instant application, it is the function of the legislative branch led by the speaker and chairperson of the petitioner herein to allocate monetary funds to itself and to the executive branch for its usage; after it has been provided with budget proposals by the 1st and 2nd respondents. Furthermore, it is the function of the executive branch to execute the bye-laws and other laws enacted by the legislative branch. This interdependence among the three governmental branches has long been recognized in USA; where the doctrine of the separation of powers and independence of those three branches is rigorously enforced. See the USA Supreme Court decision in *Youngstown Sheet & Tube Co. v Sawyer* 343 US 579 (1952), in which that court discussed the interdependence of the three governmental branches. The issue of complete independence of each branch is not practicable. In the instant application, the interdependence of the executive and legislative branch is necessary. This in itself calls for co-operation between the two branches as opposed to confrontation.

The foregoing clearly shows that the two branches of the West Pokot Government are interdependent and they must operate within the spheres of functions allocated to each branch by the law. It is also clear that interference of one branch in the affairs of the other branch may lead to paralysis to the prejudice of service delivery to the people of West Pokot County.

Consequently, I find based on the affidavit evidence of the petitioner's speaker and chairperson (Ms Catherine Mukenyang) of the County Assembly Service Board, that the petitioner has made out a case for the grant of an order of a temporary injunction to issue restraining the 1st and 2nd respondents from usurping the powers of the petitioner or from interfering, controlling or directing the affairs and business of the petitioner pending the hearing and determination of both this application and the petition.

Issue 3

The petitioner has failed in its prayer for an interlocutory mandatory injunction against the 3rd respondent. However, the petitioner has succeeded in its prayer for an interlocutory injunction against the 1st and 2nd respondents.

In the circumstances, I find that each party must bear for its own costs and I so order.

RULING SIGNED, DATED AND DELIVERED AT KAPENGURIA IN OPEN COURT VIA VIDEO CONFERENCE THIS 4TH DAY OF FEBRUARY 2021

J. M. BWONWONG'A

JUDGE

In the Presence of

Ms. Jeruto for the petitioner

Mr Ouma for the 3rd respondent

Mr Juma Court Assistant