REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

HCJR/E045/2020

REPUBLIC.....APPLICANT

VS

PAUL KIHARA KARIUKI,

ATTORNEY GENERAL & 2 OTHERS.....RESPONDENTS

AND

LAW SOCIETY OF KENYA.....EX PARTE APPLICANT

RULING

Introduction

1. On **6th** October 2020 when this suit came up for virtual hearing, I drew the applicant's counsel's attention to the existence of an earlier suit filed by the Law Society of Kenya, Nairobi Branch, (i.e, HCJR NO E010 of 2020) challenging the same decision under challenge in the instant suit. I also drew counsels' attention to the fact that two suits arise from the same set of facts and circumstances and invited both party's comments on the propriety or otherwise of having two suits based on substantially if not wholly the same set of facts and circumstances.

2. **Mr. Ochiel,** counsel for the applicant was of the view that there were two options open to the court, namely, the court could strike one or consolidate the two files. He proposed consolidation and argued that the instant suit was filed under Article **22** of the Constitution and that it raises constitutional issues.

3. **Mr. Bitta,** appearing for the State was of a different opinion. He was not agreeable to the consolidation. He described the instant suit as an abuse of court process.

4. Confronted with the parties' diametrically opposed positions, I invited them to address the court formally on the propriety, suitability or otherwise of the pendency of two identical suits.

The arguments

5. **Mr. Ochiel,** submitted that the jurisdiction to consolidate arises where two or more matters are pending in court and it appears to the court that they raise the same questions of law or facts or the right to the relief claimed arises from the same transaction or series of transactions or where the court finds some other reason to make orders for consolidation. He argued that in such instances, the cases are united and treated as one. He submitted that the main purpose is to save time and costs to avoid the possibility of conflicting decisions in the same matter.

6. Additionally, Mr. Ochiel argued that the Civil Procedure Rules confer powers to this court to consolidate where the cases raise the same questions of facts. He argued that the other test is whether or not a party will be prejudiced by the consolidation. It was his submission that the LSK will be prejudiced if the suits are not consolidated.

7. **Mr. Bitta** opposed the consolidation and urged that the instant suit being the later suit should be struck off for being an abuse of court process. He argued that the applicants in both suits are the same entity because the LSK Branch acts on behalf of the parent body. He argued that even if consolidation is allowed, it will be the branch suing on behalf of the LSK seeking the same orders. He argued that the existence of the two suits is against public policy and it will lead to multiplicity of suits on the same subject. He argued that the Respondent will suffer prejudice because they will be required to defend the same suit twice. Additionally, he argued that the instant application offends the *sub judice* rule and it is an abuse of court process by a party who is deemed to know the law. He prayed that the suit be struck off.

8. In his submissions in reply, Mr. Ochiel argued that Mr. Bitta has not replied to the application for consolidation at all. He argued that Mr. Bitta claimed that the AG will be prejudiced by replying to two applications, yet he admitted that he was not served with the earlier suit. It was his submission that the LSK has a statutory mandate to perform its functions, and, that, the earlier suit was filed by the Nairobi branch whose functions involve matters touching on members within its branch, as opposed to the LSK which represents all the members. To him, there is no reason at all not to consolidate the two suits.

Determination

9. The existence of two suits is not disputed. HCJR No. **010** of 2020 was filed by the Law Society of Kenya, Nairobi Branch while the instant suit was filed by the Law Society of Kenya, the main body. The two suits seek orders of *Certiorari* and *Prohibition* to prohibit and quash the decision and or resolutions of the National Development and Communication Cabinet Committee dated **8th** July 2020 signed and or under the hand of Mr. Joseph Kinyua, Head of Public Service transmitted to Ministries and State Departments for action as a decision of the Cabinet directing them: -

> *i. Not to contract external counsel without the written approval of the Attorney General and*
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> *ii. To terminate within **21** days from the date hereof engagements with all external advocates who had been contracted without the express and prior grant of the concurrence of the Attorney General.*

10. The two cases not only challenge the same decision, but they seek identical orders. They arise from the same set of facts and circumstances. This is evident from their respective pleadings. The core question is whether the instant suit offends the doctrine of *sub judice*. Unfortunately, Mr. Ochiel concentrated his submissions on the question of consolidation and carefully avoided to address the question whether this suit offends the *sub judice* rule and whether it is an abuse of court process. All his arguments dwelt on the rationale for consolidating cases which was not controverted.

11. The principles of consolidation of suits are settled. They were best explained in *Stumberg and another v Potgeiter*[1] as follows:-

> *"Where there are common questions of law or facts in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be ordered."*

12. The Supreme Court Case of India in *Prem Lala Nahata & v Chandi Prasad Sikaria*[2] had this to say: -

> *"…Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the Court and it appears to the Court that some common questions of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits"*

13. In *Law Society of Kenya v The Centre for Human Rights and Democracy*,[3] the Supreme Court of Kenya had this to say about consolidation of suits: -

> *"The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it." (Emphasis added)*

14. From the above jurisprudence, a broad principle emerges relating to consolidation of suits. That is, where there are common questions of law or fact in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matter should be disposed at the same time, consolidation should be ordered. However, it is succinct position of law that precedential verdicts are to be followed where the facts of the case are almost identical in nature or the question of law involved is identical.

15. The plea to consolidate the cases was raised in response to the courts invitation to the parties to address the existence of an identical suit filed by the Law Society of Kenya, Nairobi branch based on the same set of facts seeking similar orders as sought in this case. As the Supreme Court observed in the above cited case, consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it. If the instant cases are examined in the light of the above settled legal propositions, then it becomes clear that the plea for consolidation cannot stand judicial scrutiny in this case. The issues at hand are crystal clear, namely, whether this suit offends the question of *sub judice* and whether it is an abuse of court process. If the answers are in the affirmative, then consolidation would be impermissible because its application was never meant to cure or cover the doctrine of *sub judice* or abuse of court process. Put differently, a plea for consolidation is not permissible in circumstances whereby it is evident it is being used to evade the wrath of the *sub judice* rule as opposed to serving the settled principles of consolidation laid down in the above authorities.

16. I now turn to the question of *sub judice* which Mr. Ochiel avoided to address. A useful starting point is section **5** of the Civil Procedure Act[4] which provides that any court shall, subject to the provisions herein contained, have jurisdiction to try all suits of a civil nature excepting suits of which its cognizance is either expressly or impliedly barred. The operative words in this provision are "expressly" or "impliedly barred."

17. With a large number of pending cases, the judiciary is overburdened and faces a stark lack of resources. In a situation like this, when two suits arising out of the same issues between the same parties are brought before the courts, there is bound to be wastage of resources and frivolous litigation. In order to correct this redundancy, there exists the doctrine of *sub judice* which is captured in section **6** of the Civil Procedure Act.[5] In a humble attempt to understand the principle and reasoning behind this doctrine and its application, I will attempt to analyse some salient features of the rule of *sub judice*.

18. Both suits challenge the same decision. The prayers sought in both suits are the same. Since both the suits cite similar issues, the decision of the first suit should be binding on those issues and it need not be tried again. If the plea in the first suit succeeds, then it will render the second case *res judicata*. In fact, a favourable decision would not only benefit the Nairobi Branch, but the entire bar in the country. This truth renders the second suit useless and of no utilitarian value. A second trial on the same issues would entail duplication of work as evidence required to prove those issues in the first suit would be similar to those in the second suit (read instant suit). Thus, it is desirable that such

issues be resolved or adjudicated by one court only. It will avoid conflicting decisions or complications arising therefrom.

19. In order to check this very problem, there exists the concept of *sub judice* which in Latin means *"under Judgement."* It denotes that a matter is being considered by a court or judge. The concept of *sub judice* that where an issue is pending in a court of law for adjudication between the same parties, any other court is barred from trying that issue so long as the first suit goes on. In such a situation, order is passed by the subsequent court to stay the proceeding and such order can be made at any stage.

20. In this regard, section **6** of the Civil Procedure Act[6] expressly provides that no court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

21. It is common ground that the instant suit was filed despite the existence of a pending Judicial Review application filed by the Law Society of Kenya, Nairobi Branch. The only addition as far as the parties are concerned is the inclusion of Fred Matiangi, Cabinet Secretary, Interior and Coordination of National Government and Mr. Joseph Kinyua, Secretary to the Cabinet. The facts and reliefs sought are wholly if not substantially similar to the earlier suit.

22. The mere addition of a party or parties does not alter the pith and substance of the suit. The *Black's Law Dictionary*[7] defines *lis pendens,* as a Latin expression which simply refers to a "pending suit or action." *The Oxford Dictionary of Law*[8] defines the expression in similar terms. In the context of Section **6** of the Civil Procedure Act[9] which encapsulates the principles that underpin the rule, it simply means that no court ought to proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previous instituted suit or proceeding; and or the previously instituted suit or proceedings is between the same parties; and or the suit or proceeding is pending in the same or any other court having jurisdiction to grant the reliefs claimed.

23. The Supreme Court of Kenya in *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)*[10] had occasion to pronounce itself on the subject of *sub judice.* It aptly stated: -

> *[67] The term 'sub-judice' is defined in Black's Law Dictionary 9th Edition as: "Before the Court or Judge for determination." The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.*
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> *[68] In the above context, it cannot be denied that the issues and prayers sought by the Petitioner in the two Constitutional Petitions generally call for the interpretation and application of provisions of Chapter Six of the Constitution. The issues and orders in the two Constitutional Petitions substantially ascend from the criteria for the implementation of the provisions of Chapter Six of the Constitution. For the High Court to sufficiently pronounce itself in the two Constitutional Petitions, it has to interpret and apply the provisions of Chapter Six of the Constitution on leadership and integrity.*
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> *[69] In Constitutional Petition No. 142 of 2017, the Petitioner challenges the constitutionality of the Working Group as well as the criteria on the implementation of the provisions of Chapter Six of the Constitution as established by the Working Group. The High Court has therefore been tasked to examine the constitutionality or otherwise of the criteria so established by the Working Group.*
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> *[70] In Constitutional Petition No. 68 of 2017 the Petitioner therein challenges requirement for clearance by the state and private organs on grounds that it threatens and violates the provisions of the Constitution. For the High Court to determine the constitutionality of the requirement for clearance challenged by the Petitioner in Constitutional Petition No. 68 of 2017 or the Working Group criteria as well as the 'Resolution on Complimentary Framework of Collaboration by Agencies to Ensure Compliance with Leadership and Integrity Requirements in August 2017 General Elections' and 'Compliance with Leadership and Integrity Requirements in the 2017 General Elections' challenged in Constitutional Petition No. 142 of 2017, it has to examine, interpret and apply the provisions of Chapter Six of the Constitution.*
>
> *[71] In so doing, the High Court shall be compelled, to determine whether a Constitutional test is set up in Chapter Six of the Constitution, whether the set test (if any) is fit and proper, objective or subjective, the scope of application of the test, the implementing organs and bodies. These are substantially the same issues subject of the Advisory Opinion sought by the Applicant comprised at pages 13 to 19 of the Reference before this Court.*
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> *[72] We therefore find that this Reference, as framed, mainly raises issues of constitutional interpretation. These issues are also substantially in issue before the High Court in Constitutional Petition No. 68 of 2017 and Constitutional Petition No. 142 of 2017. In view of Article 165 of the Constitution, the High Court is the Court of first instance with regard to jurisdiction for interpretation and application of the Constitution and that Court has already been moved.*
>
> *[73] Guided therefore by these principles, and in exercise of our discretion, we decline to exercise our jurisdiction under Article 163(6) of the Constitution. This Reference is sub-judice and this Court will not usurp the High Court's jurisdiction under Article 165 (3).*

24. The *sub judice* rule like other maxims of law has a salutary purpose. The basic purpose and the underlying object of *sub judice* is to

prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the parties to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to prevent multiplicity of proceedings.[11]

25. In a fairly recent decision of this court, namely JR No. **146** of 2020, which incidentally involved the Law Society of Kenya, I stated that the words *"directly and substantially in issue"* are used in contradistinction to the words *"incidentally or collaterally in issue."* Therefore, *sub judice* would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject- matter in both the proceedings is identical.

26. Paraphrasing what I said in the above case, the key words in applying *sub judice* rule is that *"the matter in issue is directly and substantially in issue in the previously instituted suit."* The test for applicability of the *sub judice rule* is whether on a final decision being reached in the previously instituted suit, such decision would operate as *res-judicata* in the subsequent suit. As concluded earlier, the answer to this question is a resounding yes. However, when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit or suits.

27. As the High Court of Uganda held in *Nyanza Garage v Attorney General:-*[12]

> *"In the interest of parties and the system of administration of justice, multiplicity of suits between the same parties and over the same subject matter is to be avoided. It is in the interest of the parties because the parties are kept at a minimum both in terms of time and money spent on a matter that could be resolved in one suit. Secondly, a multiplicity of suits clogs the wheels of justice, holding up resources that would be available to fresh matters, and creating and or adding to the backlog of cases courts have to deal with. Parties would be well advised to avoid a multiplicity of suits."*

28. At the risk of repeating myself, for the doctrine of *sub judice* to apply the following principles ought to be present:- (a) There must exist two or more suits filed consecutively; (b) The matter in issue in the suits or proceedings must be directly and substantially the same, the parties in the suits or proceedings must be the same or must be parties under whom they or any of them claim and they must be litigating under the same title, the suits must be pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed. The mere fact that the applicant in the earlier suit is a Branch of the Law Society of Kenya, while the applicant in the instant suit is the main body does not change the situation. The Branch is suing on behalf of its members. As stated earlier, should the court determine the earlier suit either way, it will render the issues in the instant suit *res judicata.* Put differently, the outcome of the earlier suit will apply to the entire membership of the Law Society.

29. The uncompromising manner in which courts have consistently enforced the *sub judice* rule was best explained in *Thiba Min Hydro Co. Ltd v Josphat Karu Ndwiga,*[13] which held that it is not the form in which the suit is framed that determines whether it is *sub judice*, rather it is the substance of the suit, and that, there can be no justification in having the two cases being heard parallel to each other. I find no justification at to sustain the instant suit. This position extinguishes Mr. Ochiel's argument that the instant suit is filed under Article **22** of the Constitution and that it raises constitutional issues. A simple test would be whether this court can determine the issues raised in this case and allow or decline the prayers sought in these proceedings without delving into the issues pending in **HCJR 010** of 2020 and that if the prayers sought are granted in the said case, whether they will have an impact on the instant suit. For instance, if the court in the earlier suit up holds the applicant's challenge on the legality and constitutional validity of the impugned decision, *res judicata* can apply to the issues raised in this suit which also challenges the legal and constitutional validity of the same decision.

30. The second ground upon which Mr. Ochiel's argument collapses is that the principle of *sub judice* does not talk about the "prayers sought" but rather *"the matter in issue."* The matters in issue in the two suits are substantially the same, hence, my finding that *res judicata* would apply if one suit is determined. In *Re the Matter of The Interim Independent Electoral Commission*[14]the Supreme Court cited with approval an Australian decision which held: -[15]

> *"…we do not think that the word 'matter'…means a legal proceeding, but rather the subject matter for determination in a legal proceeding. In our opinion there can be no matter…unless there is some right, duty or liability to be established by the determination of the Court…"*

31. Mr. Ochiel's argued that the instant suit is brought under Article 22 of the Constitution and that it raises constitutional issues. This argument is attractive because arguments invoking the Constitution are bound to evoke emotions because it is the Supreme law of the land. However, attractive as it is, this argument collapses not on one but on three fronts. *First*, a constitutional question is an issue whose resolution requires the interpretation of a constitution rather than that of a statute.[16] When determining whether an argument raises a constitutional issue, the court is not strictly concerned with whether the argument will be successful. The question is whether the argument forces the court to consider Constitutional rights or values.[17]

32. As was stated in *Fredericks & Others vs MEC for Education and Training, Eastern Cape & Others*[18] recalling the court's observations in *S v Boesak*[19] :-

> *"The Constitution provides no definition of "constitutional matter." What is a constitutional matter must be gleaned from a reading of the Constitution itself: If regard is had to the provisions of .....the Constitution, constitutional matters must include disputes as to whether any law or conduct is inconsistent with the Constitution, as well as issues concerning the status, powers and functions of an organ of State....., the interpretation, application and upholding of the Constitution are also constitutional matters. So too,..., is the question whether the interpretation of any legislation or the development of the common law promotes the spirit, purport and objects of the Bill of Rights. If regard is had to this and to the wide scope and application of the Bill of Rights, and to the other detailed provisions of the Constitution, such as the allocation of powers to various legislatures and structures of government, the jurisdiction vested in the Constitutional Court to determine constitutional matters and issues connected with decisions on constitutional matters*

is clearly an extensive jurisdiction."[20]

33. Put simply, the following are examples of constituting constitutional issues; The constitutionality of provisions within an Act of Parliament; the interpretation of legislation, and the application of legislation.[21] At the heart of the cases within each type or classification is an analysis of the same thing – the constitutionally entrenched fundamental rights. Therefore, the classifications are not discreet and there are inevitably overlaps, but the classifications are nonetheless useful theoretical tools to organize an analysis of the nature of constitutional matters arising from the cases before the Court. This court abhors the practice of parties converting every issue in to a constitutional question and filing suits disguised as constitutional Petitions when in fact they do no not fall anywhere close to violation to constitutional Rights.

34. *Second*, in determining whether or not *sub judice* applies, it is the substance of the claim that ought to be looked at rather than the prayers sought. The substance of this suit is wholly identical to the earlier suit.

35. *Third,* the mere invocation of a constitutional provision simply because it was not expressly cited in the earlier suit cannot be a basis to justify multiplicity of suits. The multiplicity of suits is unnecessary and impermissible. It would amount to unfairly burdening a Respondent by requiring them to defend the same suit twice which is an affront to the doctrine of *sub judice*. It amounts to imprudent use of the court's valuable time. The finite court resources can be deployed elsewhere.

36. Applying the principles of the application of *sub judice* discussed above and guided by the authorities cited, I find and hold that this suit offends the doctrine of *sub judice.*

37. *Next,* I will address the question whether this suit is an abuse of court process. As stated earlier, it is common ground that as at the time the instant suit was filed, the earlier suit was pending in this court. The earlier suit was filed by a branch of the applicant. There is no mention of the earlier suit at all in the pleadings. The question is whether this case which is strikingly similar to the earlier suit is an abuse of court process as Mr. Bitta submitted.

38. The court has an inherent jurisdiction to protect itself from abuse or to see that its process is not abused. The black's law dictionary defines abuse as everything, which is contrary to good order established by usage that is a complete departure from reasonable use. An abuse is done when one makes an excessive or improper use of a thing or to employ such thing in a manner contrary to the natural legal rules for its use.[22] The situations that may give rise to an abuse of court process are indeed in exhaustive, it involves situations where the process of court has not been or resorted to fairly, properly, honestly to the detriment of the other party. However, abuse of court process in addition to the above arises in the following situations: -

a. Instituting a multiplicity of actions on the same subject matter, against the same opponent, on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.

b. Instituting different actions between the same parties simultaneously in different court even though on different grounds.

c. Where two similar processes are used in respect of the exercise of the same right.

d. Where an application for adjournment is sought by a party to an action to bring another application to court for leave to raise issue of fact already decided by court below.

e. Where there no iota of law supporting a court process or where it is premised on recklessness. The abuse in this instance lies in the inconvenience and inequalities involved in the aims and purposes of the action.[23]

f. Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.

g. Where an appellant files an application at the trial court in respect of a matter which is already subject of an earlier application by the respondent at the Court of Appeal.

h. Where two actions are commenced, the second asking for a relief which may have been obtained in the first. [24]

39. Abuse of court process creates a factual scenario where a party is pursuing the same matter by two-court process. In other words, a party by the two court process is involved in some gamble; a game of chance to get the best in the judicial process.[25]A litigant has no right to purse *paripasua* two processes, which will have the same effect in two courts at the same time with a view of obtaining victory in one of the process or in both. In several decisions of this court, I have stated that litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by judicial process where the parties place on the table of justice their different position clearly, plainly and without tricks. Pursuing two processes at the same time constitutes and amounts to abuse of court/legal process.[26] It matters not that the earlier suit was filed by the Branch of the LSK while the instant suit is filed by the main body.

40. Thus, the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse.[27] The abuse lies in the multiplicity and manner of the exercise of the right rather than exercise of right *per se*. The abuse consists in the intention, purpose and aim of person exercising the right, to harass, irritate, and annoy the adversary and interface with the administration of justice.[28]

41. I find that the applicant has presented the same issues which were being litigated in the earlier case. This suit presents a sad scenario of not only having parallel proceedings on the same issues involving the same parties but also a great risk of coordinate courts granting conflicting orders. Similarly, this court is being invited to determine substantially similar issues pending before the court. The applicant did

not disclose in its pleadings the existence of the earlier suit. This suit falls within the ambit of what constitutes abuse of court proceedings enumerated above. As stated earlier, the determination of the earlier suit will render the issues cited herein *res judicata* and decision will apply to the entire Law Society membership. This suit is struck off with no orders as to costs on grounds that it is an abuse of court process.

Signed, Dated and Delivered electronically at Nairobi this 8th day of October, 2020.

John M. Mativo

Judge

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[1] 1970 E.A. 323.

[2] (2007) 2, Supreme Court Cases 551 at paragraph 18.

[3] Supreme Court of Kenya, Petition No. 14 of 2013.

[4] Cap 21, Laws of Kenya.

[5] Ibid.

[6] Ibid.

[7] *8th Ed.*

[8] *5th Ed.*

[9] Cap 21, Laws of Kenya.

[10] {2020} e KLR

[11] *National Institute of Mental Health & Neuro Sciences v C. Parameshwara*, (2005) 2 SCC 256.

[12] HCCS No. 450 of 1993.

[13] {2013} e KLR.

[14] Constitutional Application No. 2 of 2011 {2011} eKLR.

[15] In Re Judiciary Act 1903-1920 & In re Navigation Act 1912-1920 {1921} 29 CLR 257.

[16]http://www.yourdictionary.com/constitutional-question

[17]Justice Langa in Minister of Safety & Security v Luiters, {2007} 28 ILJ 133 (CC)

[18] {2002} 23 ILJ 81 (CC)

[19] {2001} (1) SA 912 (CC)

[20] 2001 (1) SA 912 (CC)

[21] Supra note 5 at paragraph 23

[22]Black Law Dictionary, Sixth Edition Black, Henry Campbell, Black Law Dictionary Sixth Edition, Continental Edition 1891- 1991 P 990 P 10-11.

[23] *Jadesimi v Okotie Eboh* (1986) 1NWLR (Pt 16) 264.

[24](2007) 16 NWLR (319) 335.

[25] Justice Niki Tobi JSC of Nigeria.

[26] See e.g. *Agnes Muthoni Nyanjui & 2 Others vs Annah Nyambura Kioi & 3 Others* Succ Cause no 920 of 2009 and *Graham Rioba*

Sagwe & Others vs Fina Bank Limited & Others, Pet No. 82 of 2016.

[27]Ibid.

[28] Ibid.