



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW MISCELLANOUS APPLICATION NO. 115 OF 2018

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION.

AND

IN THE MATTER OF ARTICLE 1(1),(2)&(3)(b), 10, 22, 23(3)(f), 38(2)(a) &(3),

47 AND 165(6)&(7) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

AND

IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT,

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010

AND

IN THE MATTER OF: SECTION 3(2)(a), 4(1A), 2, 3, 6, 9(2), 28 AND THE SECOND

SCHEDULE TO THE SUPPLIES PRACTITIONERS MANAGEMENT ACT, 2007

AND

IN THE MATTER OF: SUPPLIES PRACTITIONERS MANAGEMENT (ELECTION) REGULATIONS, 2015

BETWEEN

REPUBLICAPPLICANT

VERSUS

KENYA INSTITUTE OF SUPPLIES MANAGEMENT.....RESPONDENT

EX- PARTE: MWANIKI GACHUBA

JUDGMENT

The Application

1. The ex-parte Applicant herein, Mwaniki Gachuba, (hereinafter “the Applicant”), is a Supplies Practitioner and a member of the Kenya Institute of Supplies Management which is the Respondent herein, (hereinafter “the Respondent”). The Respondent is a statutory corporate body established under section 3 of the Supplies Practitioners Management Act of 2007. The Applicant has brought the instant judicial review proceedings by way of a Notice of Motion application dated 13th March 2018, and is seeking the following orders therein:

- a) An Order of Certiorari to remove to this Court for purposes of quashing the Respondent’s Notice and Agenda of the Annual General Meeting dated 28th February 2018.**
- b) An Order of Prohibition to prohibit the Respondent from holding an Annual General Meeting at which the election of a Chairman and six members of the Council is not an item of the agenda.**
- c) Order of Mandamus to compel the Respondent to convene and hold an Annual General Meeting at which a Chairman and six members of the Council will be elected.**
- d) Costs of the suit.**

2. The impugned Notice and Agenda of the Annual General Meeting dated 28th February 2018 read as follows:

”KENYA INSTITUTE OF SUPPLIES MANAGEMENT

NOTICE AND AGENDA OF THE ANNUAL GENERAL MEETING OF THE KENYA INSTITUTE OF SUPPLIES MANAGEMENT TO BE HELD ON MONDAY THE 30TH APRIL, 2018, 2.30 – 5.30PM, AT KICC

NOTICE IS HEREBY given that in accordance with Section 28(3) of the supplies Practitioners Management Act 2007, the Annual General Meeting of the Kenya Institute of Supplies Management will be held on Monday, 30th April 2018 at 2.30 – 5.30pm at the Kenyatta International Convention Centre, to transact the following business:-

- 1. Chairman’ S Report for the period ended 31st December 2017**
- 2. Annual report and audited Financial Statements for the period ended 31st December 2017**
- 3. Determination of date for election of KISM Council**
- 4. Any other Business**

By Order of Council

Dr. Akunga Momanyi, PhD, Advocate

Secretary “

3. After leave was granted to commence the proceedings, this Court granted a stay of the implementation and discussion of item 3 on “Determination of date for Election of KISM Council” of the impugned Notice and Agenda of the Respondents Annual General Meeting that was to be held on 30th April 2018, , but declined to stay the holding of the Annual General Meeting.

4. The Application is supported by a statutory statement dated 12th March 2018, a verifying affidavit sworn on the same date by the Applicant, a replying affidavit he swore on 13th April 2018, and two further affidavits sworn by the Applicant on 26th October 2018. The Applicant avers that the Respondent is governed by a Council consisting of a Chairman, Principal Secretary for National Treasury, the Director General of the Public Procurement Regulatory Authority, and six other members elected by the members of the Respondent. Further, that the Respondent’s Chairman and the six members are to hold office for three years and are eligible for re-election for one further term of three years, which elections are to be conducted at the Annual General Meetings.

5. The Applicant contended that the Executive Board existing before the enactment of the Act was converted into an Interim Council of the Respondent, and mandated to convene the first Annual General Meeting at which members of the Council were to be elected, within twelve months of the commencement of the Supplies Practitioners Management Act, 2007. However, that the Interim Council has been in office for ten (10) years and has never convened and/or held an Annual General Meeting or conducted elections of the Chairman and the six members of the Council, nor has it informed members of the Respondent when it intends to conduct the election. In addition, that this is in spite of the coming into effect of the Supplies Practitioners Management (Election) Regulations, 2015 *vide* Legal Notice No. 247 of 2015, which detail how to organise and conduct the election of members of the Council.

6. The gravamen of the Applicant’s case is that on 28th February 2018, the Respondent’s Interim Council advertised a Notice and Agenda of the Annual General Meeting to be held on Monday, 30th April, 2018, which notice purports that a Chairman and six other members of the Council will not be elected at the Annual General Meeting, as members will only be required to determine an election date. Further, that to ask members of the Respondent to determine an election date at the Annual General Meeting is an abdication of duty and dereliction of

responsibility as it is the mandate of the Interim Council to convene and hold an Annual General Meeting at which the election of the Chairman and six other members of the Council is to be held. In addition, that it was dishonest of the Interim Council to require members to determine the election date while it knew or ought to have known that the election have to be held at the first Annual General Meeting.

7. According to the Applicant, the decision not to conduct election of a Chairman and six members of the Council is an unfair administrative action, that unlawfully purports to limit the members' electoral rights after a decade's wait, and the notice is ineffective having been issued by a stranger, one Dr. Akunga Momanyi, PhD, Advocate, who is not the Secretary to the Council. Further, that despite the Applicant requesting the Interim Council to recall the impugned notice and re-issue it in compliance with the law, the Respondent is unequivocal that no election of members of the Council will be conducted at the Annual General Meeting scheduled on 30th April, 2018. Therefore, that the failure to conduct elections at the Annual General Meeting is failure to discharge a mandatory statutory duty and constitutes unconstitutional, unlawful and undemocratic extension of the Interim Council's tenure.

8. The Applicant in his reply to the Respondent's averments contended that it cannot take 10 years and more to prepare for elections, and the Respondent has not annexed any evidence to show the steps or preparations it has been undertaking for the elections. Further, that under the Supplies Practitioners Management (Election) Regulations, 2015, the determination of the election date is the exclusive mandate of the Interim Council and not of the Annual General Meeting, and that the said elections must be conducted in the first Annual General Meeting. The Applicant also averred that the Respondent did not brief its members, or seek resolutions from members on any difficulties it had with the regulations and holding of elections.

The Response

9. The Respondent opposed the application through a replying affidavit and supplementary sworn on 10th April 2018 and 9th July 2018 respectively by Hedwig Nyalwal, the Chief Executive Officer and Secretary to the Respondent's Interim Council. The Respondent's Chairman, Eng. Christopher Onuongá Oanda also filed a replying affidavit sworn on 9th July 2018. The Respondent averred that following the change of office from the prior administration under the Executive Board, the Respondent's Interim Council has been making steps and preparations to hold an Annual General Meeting, during which election of the Chairman and the six council members would be done in accordance to the provisions of Supplies Practitioners Management (Elections) Regulations, 2015. Further, that the Notice and Agenda of the Annual General Meeting of the Respondent dated 28th February 2018 has been issued, amongst other agenda, to determine a date for election of the Respondent's Council as a way of ensuring that the Respondent operates in accordance with the law.

10. That the Supplies Practitioners Management (Elections) Regulations, 2015 allows for advertisement for and holding of General Meetings for purposes other than the election of a Chairman and members of the Council, and that in the circumstances, the Agenda and Notice of Annual General Meeting date 28th February, 2018 was made in strict adherence to the requirements of the Regulations and relevant applicable laws. In addition, that under the Act and the Regulations, it is not a prerequisite for elections of Council to be held for a duly convened Annual General Meeting to be valid, unless the specified Annual General Meeting has council election as an agenda. In any event, that within the 3-years tenure period of an elected Council, there are certain years in which annual General Meetings would be held in which elections of the Chairman and the Council would not take place.

11. According to the Respondent, by calling on the members of the Respondent to determine an election date at the scheduled General Meeting, it intends to continue and finalize the background electoral preparations while at the same time ensuring that the Respondent's members have had an opportunity for public participation in the stated preparations, and should not be seen as an abandonment of the Council's duty to the public and/or members of the Respondent. Further, given that the elections would be the inaugural elections of the Interim Council under the Supplies Practitioners Management Act No. 17 of 2007 and the Elections Regulations of 2015, the council had to undertake comprehensive backgrounds preparations to enable the Respondent's Council discharge its duties effectively, lawfully, and carefully as, and when required and in accordance to law.

12. Among the preparations and areas in need of discussion identified by the Respondent in its response were sensitisation of the members, preparation of election materials and officers to manage the elections; updating of its membership base and voters register, the voting mode, and technical advice and recommendations on the elections that was to be given by the Respondents Council Election Task Force. The Respondent averred that that it has kept its members including the Applicant informed of developments in this regard, and denied that it had ill will or dishonest motives in advertising the Notice and Agenda of the Annual General Meeting .

13. Lastly, the Respondent also contended that it has powers to delegate the exercise of its powers and duties to any committee, member, employee or agent. That it therefore delegated the power to issue notice for the Annual General Meeting to be held on 30th April 2018 to one its agents who is an advocate duly admitted to its panel of advocates. The Respondent annexed a copy of a letter authorising Dr. Akunga Momanyi to issue the notice, and also annexed various other correspondence and document in support of its averments.

The Determination

14. The Application was canvassed by way of written submissions. Onyoni Opini & Gachuba Advocates filed two sets of submissions dated 26th October 2018 and 28th January 2019 on behalf of the Applicant. The Respondent's submissions were dated 19th April 2018 and were filed by Akunga Momanyi and Company Advocates. I have considered the pleadings, submissions and arguments made by the parties and find that the issues arising for determination are as follows:

- a) Whether the Respondent acted in error of the law in advertising for the Notice and Agenda of the Annual General Meeting that was to be held on 30th April 2018.
- b) Whether there was an unlawful delegation of powers by the Respondent as regards the issue the said Notice and Agenda of the Annual General Meeting.

- c) Whether the Respondent acted irrationally in issuing the said Notice and Agenda of the Annual General Meeting.
- d) Whether the said Notice and Agenda of the Annual General Meeting was issued with ulterior motives and in bad faith.
- e) Whether the issue of the said Notice and Agenda of the Annual General Meeting violated the Applicant's legitimate expectation.
- f) Whether the Applicant merits the prayers sought .

15. In considering the said issues, it is imperative at the outset to delineate the parameters of this Court's powers in judicial review. The broad grounds for the exercise of judicial review jurisdiction were stated in the case of **Pastoli vs Kabale District Local Government Council & Others [2008] 2 EA 300** at pages 303 to 304 thus:

“In order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety: See *Council of Civil Service Union v Minister for the Civil Service* [1985] AC 2; and also *Francis Bahikirwe Muntu and others v Kyambogo University*, High Court, Kampala, miscellaneous application number 643 of 2005 (UR).

Illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without Jurisdiction or *ultra vires*, or contrary to the provisions of a law or its principles are instances of illegality.....

Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards: *Re An Application by Bukoba Gymkhana Club* [1963] EA 478 at page 479 paragraph “E”.

Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. (*Al-Mehdawi v Secretary of State for the Home Department* [1990] AC 876).”

16. In addition, the parameters of judicial review were addressed by the Court of Appeal in the case of **Municipal Council of Mombasa vs Republic & Umoja Consultants Limited**, Nairobi Civil Appeal No. 185 of 2001, [2002] eKLR as follows:

“The court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power, i.e. the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision - maker take into account relevant matters or did he take into account irrelevant matters? These are the kind of questions a court hearing a matter by way of judicial review is concerned with, and such court is not entitled to act as a court of appeal over the decider; acting as an appeal court over the decider would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision – and that, as we have said, is not the province of judicial review.”

17. It was also emphasized by the Court of Appeal in **Suchan Investment Limited vs. Ministry of National Heritage & Culture & 3 others**, (2016) KLR that while *Article 47 of the Constitution* as read with the grounds for review provided by section 7 of the *Fair Administrative Action Act* reveals an implicit shift of judicial review to include aspects of merit review of administrative action, reviewing court has no mandate to substitute its own decision for that of the administrator. The court can only remit the matter to the administrator and or make orders stipulated in Section 11 of the Act.

18. **This Court will proceed to examine and determine the issues raised by the parties in light of the foregoing principles.**

Whether the Respondent acted in Error of Law

19. There were two limbs of arguments raised as regards the issue of the Respondent acting illegally and in error of law. The first was that the Respondent's impugned Notice and Agenda of the Annual General Meeting was tainted with the illegality for reasons that instead of issuing a notice that was compliant with the law, the Respondent issued a notice that required members at item 3 thereof to “determine the date for election of KISM Council.” That this meant that the Respondent had refused to conduct election,s notwithstanding that none had been conducted since 2007.

20. According to the Applicant, to require members to determine a date for election at the Annual General Meeting is also tainted with illegality as paragraphs 3 and 4 of the Second Schedule to the Supplies Practitioners Management Act, 2007 read with Regulation 3 and 10(1) of the Supplies Practitioners Management (Election) Regulations, 2015 are unequivocal that the elections shall be conducted at the date of the Annual General Meeting. Therefore, the Respondent having determined the date of the Annual General Meeting as 30th April, 2018, the decision not to include elections as an item of the business to be transacted by the members was tainted with illegalities. Further, that the Act and the Regulations do not contemplate that the first elections can be conducted on any other day other than the Annual General Meeting, and do not vest in the Annual General Meeting the power or duty to determine the election date, which is the duty and mandate of

the Interim Council. The Applicant was of the view that this position is clarified by section 28(3) of the Supplies Practitioners Management Act, 2007 which empowers the Respondent to convene a special general meeting to consider and approve the audited accounts of the Institute

21. The Respondent on the other hand submitted that the Annual General Meeting has one fundamental importance as outlined in Section 28 of the Supplies Practitioners Management Act, which is the presentation of the Respondent's audited accounts, and that there is no requirement in the Act that elections must be held at every Annual General Meeting. Therefore, that any reading of such requirement into the law would be erroneous and an attempt to take over the role of Parliament in making and amending laws. In a nutshell, the Respondent argued that the Annual General Meeting can have any agenda item as agreed upon by the council of the Respondent other than that of election of the Chairman and six members of the Council, and not all Annual General Meetings shall be for purposes of conducting elections.

22. However, be that as it may, that the transitional provisions provide for the holding of the elections during the first Annual General Meeting, and puts a rider that the same be done within twelve (12) months of the commencement of the Act. However, that the Respondent had explained the practical and legal difficulties which necessitated the Interim Council to exclude elections of the Council in the Annual General Meeting of 30th April 2018, and in lieu thereof propose the agenda item about the date for the said elections. In addition, that the Act could not be fully implemented without there first being Regulations, including the Election Regulations, and the elections envisioned under the Second Schedule of the Supplies Practitioners Management Act could not have been held earlier than the year 2016 when the Election Regulations were gazetted.

23. That upon gazettment of the Election Regulations, the interim Council commenced preparation for the conducting and holding of elections of the Chairman and six members of the Council in accordance with the law, as elections are a process rather than an event as held by the Supreme Court in the case of **Raila Odinga vs The Independent Electoral and Boundaries Commission and two Others (2017) eKLR**. However, that in the course of preparing for elections, the council realized that there were still major gaps in the Regulations that made it impossible to hold elections that meet the Constitutional threshold as it prepares for elections. In this regard, that the Interim Council decided to call the members of the Respondent in the inaugural Annual General Meeting to help determine the election date upon communicating the difficulties posed by the Regulations concerning mode of the elections, and agreeing on the suitable solutions with full involvement of members.

24. The second limb of arguments on illegality made by the Applicant was that of failure by the Respondent to discharge its statutory duty. It was submitted that the Respondent was under statutory duty to convene and conduct elections at the Annual General Meeting, and that this duty is to be found in Paragraph 3 and 4 of the Second Schedule to the Supplies Practitioners Management Act, 2007 to convene the first Annual General Meeting within a period of twelve (12) months of the commencement of the Act at which Council members shall be elected.

25. Accordingly, that the decision not to conduct elections at the Annual General Meeting scheduled for 30th April, 2018 eschewed a statutory duty and is symptomatic of a persistent and unexplained failure to conduct elections since 30th October, 2008. Further, that the Respondent did not provide credible explanation for such monumental delay or failure to conduct the first elections, and misinterpreted its statutory duty to conduct the first elections at the first Annual General Meeting as directory or discretionary.

26. The Respondent's reply to this limb of illegality was that it has explained the reason as to why its Council elections have not been held to date. Furthermore, that it has shown the efforts taken to make sure that the elections are conducted in a free, fair and credible manner that meets the high threshold demanded by the Constitution and the law, and has acted conscientiously and in good faith and in pursuance of a statutory and public duty. Lastly, that there is no indication whatsoever from the Applicant that the failure to hold elections was deliberate, negligent or that it cause or was intended to cause him any particular harm or prejudice.

27. In determining whether or not the Respondent acted illegally or in error of law, regard is made to the description of illegality by Lord Diplock in **Council of Civil Service Union v Minister for the Civil Service [1985] AC 374 at 410** as a failure by a public body to understand correctly the law that regulates its decision making power, or a failure to give effect to that law. In addition, this Court is also guided by the expose on when errors of law will arise in decisions made by a public body, as expounded in **Halsbury's Laws of England, 4th Edition** at paragraph 77 as follows:

“A public body will err in law if it acts in breach of fundamental human rights; misinterprets a statute, or any other legal document, or a rule of common law, takes a decision on the basis of secondary legislation, or any other act or order, which is itself ultra vires; takes legally irrelevant consideration into account, or fails to take relevant considerations into account, admits inadmissible evidence, rejects admissible and relevant evidence, or takes a decision on no evidence, misdirects itself as to the burden of proof, fails to follow the proper procedure required by law; fails to fulfil an express or implied duty to give reasons or otherwise abuses its power.”

28. It is therefore necessary when deciding whether a statutory power or duty has been lawfully exercised or performed, to identify the scope of that power and duty, and which involves construing the legislation that confers the power and duty. In the present application, the composition and conduct of elections of the Respondent's Council members is regulated by section 4 of the Supplies Practitioners Management Act, 2007 which reads as follows:

“(1) The Institute shall be governed by a Council to be known as the Council of the Institute which shall consist of—

(a) a chairman, who shall be a member of the Institute with at least five years experience, elected by the members of the Institute;

(b) the Permanent Secretary in the Ministry responsible for Finance;

(c) the Director-General of the Public Procurement Oversight Authority; and

(d) six other members elected by members of the Institute.

(1A) The Chairman and the members of the Council referred to in paragraph (d) shall be elected by the members of the Institute specified in section 3A(2)(a) and (b) in the manner prescribed by regulations.

(2) The chairman and every member appointed under subsection (1)(d) shall hold office for a term of three years and shall be eligible for re-election for one further term of three years.”

29. Paragraph 1 to 4 of the Second Schedule to the Supplies Practitioners Management Act, 2007 provided for transitional provisions as regards the elections of the said Council as follows:

1. “The Executive Board of the Kenya Institute of Supplies Management existing before the enactment of this Act shall assume the responsibilities imposed on the Council and the Registration Committee by this Act as an Interim Council and Interim Registration Committee until the first elections held under this Act.

2. The Chairperson elected at the last annual general meeting of the Institute shall continue to act as Chairperson of the Institute until the first elections held under this Act.

3. The Interim Council shall facilitate the registration of members of the Institute and the convening of the first annual general meeting at which Council members shall be elected.

4. The first annual general meeting of the Institute shall be convened by the Interim Council within a period of twelve months of the commencement of this Act.

30. As regards the actual elections, Regulation 10 of the Supplies Practitioners Management (Elections) Regulations, 2015 provides for the following process:

(1) “The elections of the members of the Council shall be conducted at the Annual General Meeting of the Council.

(2) The election shall be conducted by way of secret ballot and the winner shall be determined by a simple majority.

(3) Each member shall have one vote.

(4) Each member voting at the election shall specify in the manner prescribed in the ballot paper, the name of the candidate of their choice from among the list of candidates contained in the paper

(5) A person shall not write or make any other mark or sign on the ballot paper and shall, upon specifying the candidate of his choice, fold the paper so as to conceal the name of the candidate and cast his vote in the ballot boxes provided for the purpose of the conduct of the election.”

31. The date of commencement of the Act was 30th October 2007 and the elections of the Council therefore ought to have been held by 1st November 2008. Ten years down the line the said elections have not been held, and the Interim Council is still in office. The Respondent has explained the circumstances leading to the current position where the Interim Council that came into office by way of the transitional provisions is still in office after the limit of twelve months from the commencement of the Act provided by the said transitional provisions.

32. While the Applicant appears to have disputed the circumstances leading to the delay in electing a new Council, from the evidence provided by the Respondent, steps appear to have been taken to resolve the legal challenges it faced in holding the elections, including the gazettment of the Supplies Practitioners Management (Elections) Regulations, 2015. However, what is of concern to this Court and of relevance to the issue of legality is that the Respondent did not provide any evidence of any resolutions of its first Annual General Meeting or of any Annual General Meeting allowing it, after the expiry of the twelve months of its tenure set down by law, to continue to be in office in light of the difficulties it explained. The mandate of the members of the Respondent for the Interim Council’s stay in office is specifically required by section 4 of the Supplies Practitioners Management Act, 2007, by way of election, and if an election was not possible by some other legal means such a resolution by the members.

33. Although no specific provisions of the Act provides for the holding of Annual General Meetings, they are implied by section 28(3) of the Act which provides that the Council is required to within a period of four months from the end of the financial year, the Respondent shall submit to its members at an annual general meeting or special general meeting convened for that purpose its audited accounts. It is noteworthy that this is the section that was relied upon by the Respondent to issue the impugned Notice and Agenda of the Annual General Meeting that was to be held on 30th April 2018. An annual general meeting to elect the members of the Council is however specifically required by the Second Schedule to the Act.

34. In addition, where a statutory provision expressly confers a power or a duty upon a public body, and is silent whether the public body has the power to take associated steps which are necessary for, or incidental to the discharge of its functions, this fact does not mean that the body has no power to take the associated or incidental steps or powers. This is for the reason that it is an established principle of statutory interpretation that where no statutory incidental power is provided for, a public body will usually have an implicit power to do things that may reasonably and fairly be consequential upon, or incidental to its express statutory function, provided that they are necessary to the

exercise of the primary function. See in this regard the text by F. Bennion: **Bennion on Statutory Interpretation, 4th Edition**, at section 174. In the case of the Respondent, there is thus an implied power to hold Annual General Meetings from the above cited provisions.

35. It is thus my finding that to this extent, the Interim Council is illegally in office, and has indeed abdicated its statutory duty as regards regularisation of the governance structures of the Respondent. This illegal position therefore needs to be regularised immediately either by the necessary resolutions and/or elections of a new Council as provided by the Act and Supplies Practitioners Management (Elections) Regulations of 2015.

36. The Applicant argues in this respect that the Annual General Meeting of 30th April 2018 was to be the first Annual General Meeting after the gazettment of the Supplies Practitioners Management (Elections) Regulations, 2015, and the elections therefore ought to have been held during the said Annual General Meeting. A plain reading and ordinary interpretation of the provisions of the Second Schedule of the Supplies Practitioners Management Act, 2007, is that the first annual general meeting was to be convened within twelve months of the commencement of the Act, which is long past.

37. Therefore, the Annual General Meeting that was scheduled for 30th April 2018 cannot have been the annual general meeting envisaged by the Act during which the first elections of the Council members were to be held, and to this extent the notice and agenda of the said Annual General Meeting cannot be found to be illegal. This finding notwithstanding, this Court has already underscored the illegality of the current Interim Council and the need to have the issue of election of the Council members addressed with urgency by the Respondent.

Whether there was an unlawful delegation of powers.

38. The Applicant's submissions on the issue of delegation of powers were that under section 9(2) of the Supplies Practitioners Management Act, 2007, the Chief Executive Officer is the Secretary to the Council, and there is no provision in the Act that empowers the Chief Executive Officer to delegate his functions of Secretary to Dr. Akunga Momanyi Advocate. Further, that the only delegation that is permitted by under section 7 of the Act is that of the powers of the Respondent as prescribed under section 5 of the Act, which do not include the powers or functions of the Chief Executive Officer and Secretary to the Interim Council.

39. According to the Applicant, the basic question is whether the secretarial power of the Chief Executive Officer to issue the notice of the Annual General Meeting was exercised by the person upon whom it is conferred. Further, that the Respondent did not annex any evidence to demonstrate that Dr. Akunga Momanyi Advocate was at the material time conferred, either through appointment or delegation, with the power to issue the Notice of the Annual General Meeting, and the delegation was therefore unlawful and the notice was issued under dictation and ought to be quashed.

40. The Applicant relied on section 7(2)(a)(iii) of the Fair Administrative Action Act which empowers the court to review the Respondent's action or decision if the person acted pursuant to delegated power in contravention of any law prohibiting such delegation, and on the maxim *delegatus non potest delegare*, which requires that a person vested with a statutory power must exercise it personally, rather than delegate its exercise to others. Reliance was also placed on the decision in **Anthony Otiende Otiende v Public Service Commission & 2 Others, [2016] eKLR** in which this maxim was applied and for the holding that where the legislature has delegated powers and functions to a subordinate authority, it intends that authority to exercise those powers and functions and not someone else.

41. The Respondent on its part relied on section 7 of the Supplies Practitioners Management Act which in its view provides for general or specific delegation of its powers under the Act. Further, that under the section, the functions of the Respondent can be delegated not only to its members or employees, but also to an agent of the Institute. Therefore, such delegation would not be improper and consequently not *ultra vires*. Particular reference was made to section 5 (f) of the Supplies Practitioners Management Act that provides for the Respondent's functions that are necessary for the proper administration of the Act, which in the Respondent's view include the issuance of the notice for an Annual General Meeting to be delegated to any committee of the Council or to any member, officer, employee or agent of the Respondent.

42. Therefore, that Dr. Akunga Momanyi, Advocate, who issued the impugned Notice, is an agent of the Respondent within the meaning of section 7 of the Supplies Practitioners Management Act 2007, being its Advocate duly admitted to its panel of Advocates, a fact that is uncontested. Further, that it is therefore, within the powers of the Respondent to delegate the authority to issue a notice for the Annual General Meeting either to him or any other member among the category of persons contemplated by the Act. Moreover, that nothing in the Act or its regulations compels or contemplates that only the Chief Executive Officer can give such notice.

43. The Court has perused the provisions relating to the giving of notice on the Respondent's Council's elections, including on the date of elections, which are provided in Regulation 3 of the Supplies Practitioners Management (Elections) Regulations, 2015, as follows:

“(1)The Council shall send to each member and publish in two newspapers of national circulation, a notice of the date of the Annual General Meeting of the Council during which the election of the chairperson and six members of the Council under section 4(1)(a) and (b) of the Act shall be conducted.

(2) The Council shall send the notice under paragraph (1) at least sixty days before the Annual General Meeting of the Institute.”

44. It is also notable that the power to give notice as regards elections is given to the Respondent's Council. The power to delegate relied upon by the Respondents on the other hand in section 7 is given to the Respondent itself, and in which the Council is one of the delegates as follows:

“Subject to this Act, the Institute may either generally or in any particular case, delegate to any committee of the Council or

to any member, officer, employee or agent of the Institute, the exercise of any of the powers of the Institute under this Act.”

45. Therefore, the Council is bound by the general position in law that a person to whom powers or duties are delegated cannot delegate their performance to someone else, under the principle expressed by the maxim *delegatus non potest delegare* (a delegate has no powers to delegate). A power to delegate further can only arise where it is within the scope of the primary delegatee’s authority.

46. The Respondent did not point to any provisions of the Act or Regulations which allow the Council to delegate the powers or function of issuing notice on elections. No express power to delegate this function therefore exists, nor can an implied power to delegate be implied. This is for the reason that whether such an implied power exists or not will depend on relevant statutory context, and will not be construed in certain circumstances. One of these circumstances is where the importance of the function is such that it will have a considerable effect on an individual or public at large or other interest. This has been held to be so in various decisions including **General Council of Medical Education and Registration of the United Kingdom vs Dental Board of the United Kingdom, (1936) Ch 41**, **Bernard vs National Dock Labour Board, (1953) 2 QB 18** and **Vine vs National Dock Labour Board, (1957) AC 488**.

47. In the context of the Respondent’s Council elections, the notice of election will affect all members of the Respondent, and the credibility of the person giving notice of the elections is relevant to the legality of the elections, which is the main reason why the law is specific as to the person who shall give notice of elections. It is therefore necessary that the person specified by law gives the notice, and this is a power or function that cannot be delegated. It was in this regard held as follows in **Hardware & Ironmongery (K) Ltd vs. Attorney-General [1972] EA 271**.

“There is no absolute rule governing the question of delegation, but in general, where a power is discretionary and may affect substantial rights, a power of delegation will not be inferred, although it might be in matters of a routine nature. The decision whether or not the licence should be revoked required the exercise of discretion in a matter of greatest importance, since it involved weighing the national interest against a grave injustice to an individual. It was clearly a decision to be taken only by a very senior officer and was not one in respect of which a power of delegation could be inferred.”

48. The above position is restated in section 7(2)(a)(i)(ii) and (iii) of the *Fair Administrative Action Act, 2015* where it is provided that a court or tribunal may review an administrative action or decision, if the person who made the decision was not authorized to do so by the empowering provision; acted in excess of jurisdiction or power conferred under any written law; or acted pursuant to delegated power in contravention of any law prohibiting such delegation.

49. It is thus the finding of this Court that neither the Respondent nor its Interim Council could purport to delegate the powers and functions of giving notice of the elections of the Council to Dr. Akunga Momanyi, and to this extent the Notice of the date of elections of the Respondent’s Council issued on 28th February 2018 by the said Dr. Akunga Momanyi was illegal. However, for the avoidance of doubt, this finding is only on the issue of the delegation of the power to issue the notice of elections of the Council, and not of the Annual General Meeting, as there are no provisions in the applicable Act and Regulations that govern the holding of Annual General Meetings.

Whether the Respondent acted irrationally

50. On the issue of irrationality, the Applicant submitted that sections 3 and 4 of the Second Schedule to the Supplies Practitioners Management Act, 2007 provides that the Interim Council shall convene the first Annual General Meeting within a period of twelve (12) months of the commencement of the Act at which Council members shall be elected. That this did not happen and the Respondent explains that this was due to the failure by the Cabinet Secretary and the Attorney General to gazette election regulations required under the Act. However, that the Respondent did not annex any evidence to demonstrate that it drafted the election regulations and forwarded to the Cabinet Secretary and or the Attorney General for gazette. Further, that no evidence was tendered to demonstrate that the Interim Council involved members in the drafting of election regulations.

51. Additionally, that the Respondent did not annex any evidence to demonstrate that it convened an Annual General Meeting for members to pass a resolution requiring the Cabinet Secretary and the Attorney General to gazette the election regulations, or to move to court to compel the two to gazette the election regulation or to move to court to seek extension of the time to conduct the first election. That the Interim Council has in fact never convened an Annual General Meeting since 30th October, 2007.

52. The failure to conduct elections at the Annual General Meeting to be held on 30th April, 2018 was therefore contended to be incompatible with and not rationally connected to the purposes of Article 1(2), 10(2)(a), 38(2)(a)&(3), 47(1) 73(2)(a), 81 and 86 of the Constitution of Kenya, 2010, section 4(1A) and the Second Schedule of the Supplies Practitioners Management Act, 2007, and the Supplies Practitioners Management (Election) Regulations, 2015. That the decision is therefore invalid as it is one which no rational or logical decision-maker could arrive at based on the same circumstances. The Applicant in this regard cited section 7(2)(i) of the Fair Administrative Action Act, 2015 which empowers the court to review an administrative decision for being irrational and un-proportional.

53. On the arguments made on the irrationality of its decision, the Respondent cited the decisions in **Republic vs Chief Magistrate Milimani Commercial Court & 2 Others ex parte Violet Ndanu Mutinda & 5 Others [2014] eKLR** and **Pastoli vs Kabale District Local Government Council and Others [2008] 2 EA 300** for the position that in view of the lacuna in the law as well as the practical circumstances on the ground, one cannot say that the decision taken by the Interim Council was marred by such gross unreasonableness. Therefore, that the ground of irrationality or proportionality is farfetched, remote and has not been proved as against the Respondent.

54. This Court notes that it is now an established principle of law that the decision of a public body will be unlawful if it is irrational or unreasonable, in the sense of being a decision which no public body acting reasonably would have reached. This principle was settled by the decisions in **Associated Provincial Picture Houses vs Wednesbury Corporation (1948)1KB 223** and **Council of Civil Service Unions vs The Minister for the Civil Service (1985) 1 AC 374**. This ground was also explained in **Pastoli vs Kabale District Local Government Council & Others, (supra)** as follows:

“...Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...”

55. This Court has already found that the Respondent abdicated its statutory duties, and did not apply the law as regards the election of the Council members or regularization of its tenure. Therefore, to the extent that the Interim Council is illegally in office, then the Respondent's decision not to conduct elections does not resonate with the applicable law, and there was insufficient evidence to explain the legality and rationality of said decision. I therefore find the decision to give notice of, and an item to set a date for elections at the Annual General Meeting set for 30th April 2018 to have been irrational.

Whether there were Ulterior Motives and Bad Faith

56. On the issue of ulterior motives, the Applicant submitted that after issuing the impugned Notice and Agenda of the Annual General Meeting, the Respondent engaged in “Members Forum Series” which commenced on 8th March 2018 and terminated on 20th April, 2018. According to the Applicant, these forums turned out to be campaign forums for a section of the Interim Council. Therefore, that item 3 of the agenda of the Annual General Meeting is infected with improper motives of dishonesty and personal self-interest, and is intended to dishonestly extend the Interim Council's tenure other than determining an election date and to allow members of the Interim Council to campaign for an easy election.

57. The Applicant also alleged bad faith for reasons that the Interim Chairman averred at paragraph 7 of his Replying Affidavit that in spite of the promulgation of the Supplies Practitioners Management (Election) Regulations, 2015, the Interim Council failed to conduct election between 2016 and 2018 due to “*the tense, polarized and unpredictable national election cycle in 2017 and early 2018*”, which the Applicant termed a flawed and dishonest explanation, as other professional organisations conducted peaceful and successful elections in 2016 and 2017. Therefore, that the decision not to conduct elections at the Annual General Meeting held on 30th April, 2018 is therefore in bad faith as it is not in members' and public interests and is not for legitimate reasons.

58. The Applicant in this regard cited section 7(2)(e) of the Fair Administrative Action Act, 2015 which empowers the court to review an administrative decision if an issue was taken with an ulterior motive, and section 7(2)(e) of the Fair Administrative Action Act, 2015 which empowers the court to review the Respondent's decision if it was made in bad faith.

59. The Respondent's submissions on the said issue are as follows. That based on the facts set out in its replying affidavits, its Interim Council is not casual about conducting the elections but is seeking full participation, inclusion and collaborative engagements between itself and the members, to ensure members' participation in the process of preparing for elections. Further, that this is to ensure the said elections that meet the constitutional threshold of free, fair, credible, accountable elections based on universal suffrage, in accordance with Article 81 of the Constitution of Kenya. Lastly, that the Applicant has failed to demonstrate that the Respondent acted under influence or capriciously, in bad faith, or abused the legal process in a manner to trigger the Court's intervention.

60. The applicable law on the ground of acting in bad faith and for improper or ulterior motives is that this ground is one that arises when a public body exercise a statutory power for a purpose other than that for which the power was conferred is determined by looking at the purpose for which a power was exercised. In addition, acting in bad faith also connotes intentional wrongdoing, such as acting in a manner that is fraudulent, dishonest or malicious.

61. In this respect, the evidence brought by the Applicant of its allegations were statements made by the Respondent's Chairman in his replying affidavit explaining the disputed general election circumstances in 2008 as one of several reasons why the Respondent had delayed the elections of the Council. While it may have been a wrong or misplaced reason, I find that it does not meet the threshold of being dishonest or malicious, in the absence of any other additional evidence that leads to such an intention. In addition, the Applicant refers to an annexure “M6” to his replying affidavit on members forums held after the issue of the impugned Notice of the Annual General Meeting, and in an apparent contradiction he states that the said forums were meant to campaign for some members of the Interim Council, yet his main grievance is that no elections were being held as a result of the same impugned notice. I therefore find that this ground has to fail, as insufficient evidence was provided by the Applicant to sustain it.

Whether the Applicant's Legitimate Expectations were Violated

62. The Applicant on this issue submitted that he legitimately expected the Respondent to conduct elections in accordance with the Constitution of Kenya, 2010, the Second Schedule to the Supplies Practitioners Management Act, 2007 and the Supplies Practitioners Management (Election) Regulations, 2015. Further, that the decision not to conduct elections at the Annual General Meeting to be held on 30th April, 2018 frustrates his legitimate expectations of elections as he relied on the Act and the Regulations. In this respect, the Applicant submitted that he recognises the Supplies Practitioners Management (Election) Regulations, 2015 as a promise or representation that the Interim Council would conduct regular and lawful elections. Lastly, he relied on section 7(2)(m) of the Fair Administrative Action Act, 2015 which empowers the court to review the Respondent's action or decision if it violates the legitimate expectations of the person to whom it relates.

63. The Respondent did not make any submissions on this issue.

64. A five judge bench of this Court in the case of **Kalpna H. Rawal v Judicial Service Commission & 4 others [2015] eKLR** exhaustively discussed the doctrine of legitimate expectation and various judicial decisions on the doctrine in a decision that was affirmed by the Court of appeal. The said bench observed as follows:

“207. The doctrine of legitimate expectation was developed by English courts to hold rulers to their promises. In the 4th

Edition, 2001 Reissue, of Halsbury's Laws of England the authors at page 212, paragraph 92 explain the concept behind the development of the principle as follows:

“A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though there is no other legal basis upon which he could claim such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. In all instances the expectation arises by reason of the conduct of decision maker and is protected by the courts on the basis that principles of fairness, predictability and certainty should not be disregarded.

The existence of a legitimate expectation may have a number of different consequences; it may give standing to seek permission to apply for judicial review, it may mean that the authority ought not to act so as to defeat the consequence of the expectation without some overriding reason of public policy to justify its doing so, or it may mean that, if the authority proposes to act contrary to the legitimate expectation, it must afford the person either an opportunity to make representations on the matter, or the benefit of some other requirement of procedural fairness. A legitimate expectation may cease to exist either because its significance has come to a natural end or because of action on the part of the decision maker.”

65. The Supreme Court in the Communication Commission of Kenya & 5 Others vs Royal Media Services Ltd & 5 Others, (2014) e KLR also explained the principle of legitimate expectation as follows:

“[264] In proceedings for judicial review, legitimate expectation applies the principles of fairness and reasonableness, to the situation in which a person has an expectation, or interest in a public body retaining a long-standing practice, or keeping a promise.

[265] An instance of legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil. A party that seeks to rely on the doctrine of legitimate expectation, has to show that it has locus standi to make a claim on the basis of legitimate expectation.”

66. The said Court further laid down the principles that govern a successful invocation of the doctrine of legitimate expectation as follows:

“[269] The emerging principles may be succinctly set out as follows:

- a. there must be an express, clear and unambiguous promise given by a public authority;**
- b. the expectation itself must be reasonable;**
- c. the representation must be one which it was competent and lawful for the decision-maker to make; and**
- d. there cannot be a legitimate expectation against clear provisions of the law or the Constitution.”**

67. Applying these principles to the present case, this Court finds that the Applicant did not provide evidence of any representations made, or conduct by the Respondent as to the holding of elections, that could form the basis of his legitimate expectation that the elections would be held at the Annual General Meeting that was to be held on 30th April 2018. The Applicant contends that his legitimate expectations arise from the applicable laws and regulations, however the law cannot be equated with a representation, and is on the contrary an obligation that is required to be fulfilled, therefore giving rise to a duty.

68. In addition, the law cannot be resiled from, and cannot therefore form the basis of an allegation of violation of legitimate expectation, as it is obligatory. To this extent I find that even though there may be other unlawful conduct on the part of the Respondent, there was no violation of any legitimate expectation of the Applicant.

Whether the Applicant merits the prayers sought .

69. The Applicant cited various legal provisions and decisions that entitle him to the orders sought, including Articles 23(3)(f) and 165(6) and (7) of the Constitution of Kenya, 2010, as read with Section 11 and 12 of the Fair Administrative Action Act, 2015, and the Court of Appeal decision in Kenya National Examinations Council vs. Republic Ex parte Geoffrey Gathenji Njoroge, (1997) e KLR. He also relied on various legal definitions of the orders of certiorari, mandamus, prohibition.

70. The Applicant submitted that the Notice and Agenda of the subject Annual General Meeting ought to be quashed for failing to include elections as a substantive item of the business to be transacted by the Respondent's first Annual General Meeting. In addition, that order of prohibition will be efficacious as it would prohibit the Annual General Meeting from determining the date of the election as the same is not permitted by the Supplies Practitioners Management Act, 2007 and the Supplies Practitioners Management (Election) Regulations, 2015. Lastly, that an order of mandamus ought to issue to compel the Respondent to comply with Paragraph 3 and 4 of the Second Schedule to the Supplies Practitioners Management Act, 2007 and Regulation 3 and 10(1) of the Supplies Practitioners Management (Election) Regulations, 2015 and convene an Annual General Meeting at which the elections will be held

71. The Respondent on the other hand submitted that granting the Applicant the prayers sought would deny over five thousand (5000) genuine members of the Respondent an opportunity to give their views on how to hold an inclusive and fair election of the Council members, and will disenfranchise the majority of members.

72. I note that the Applicant has sought orders of certiorari, mandamus and prohibition. The holding in Kenya National Examinations Council vs. Republic Ex parte Geoffrey Gathenji Njoroge (1997) e KLR as regards the nature of these judicial review orders is as follows:

“Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision...Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings...The order of *mandamus* is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a *mandamus* cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a *mandamus* cannot command the duty in question to be carried out in a specific way... These principles mean that an order of *mandamus* compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of *mandamus* compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then *mandamus* is wrong remedy to apply for because, like an order of prohibition, an order of *mandamus* cannot quash what has already been done... Only an order of *certiorari* can quash a decision already made and an order of *certiorari* will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons. In the present appeal the respondents did not apply for an order of *certiorari* and that is all the court wants to say on that aspect of the matter.”

73. I therefore find that as the Respondent has been found to have abdicated its statutory duty, acted illegally and irrationally with respect to the holding of elections of its Council, and having unlawfully delegated the issuing of the notice of the elections to one Dr. Momanyi Akunga, the Applicant is entitled to the order sought of certiorari, but limited to item 3 of the impugned Notice and Agenda of the Annual General Meeting to be held on 30th April 2018. The order of certiorari cannot issue as regards the Annual General Meeting as the Applicant did not demonstrate that Annual Genral Meetins that was to be held on 30th April 2018 was illegal.

74. Likewise, the orders of mandamus and prohibition sought cannot be granted for this reason, as the Applicant did not show or demonstrate that it was illegal for the Respondent to hold an Annual General Meeting, and also for the reasons that this Court cannot direct the Respondent to undertake its duties and functions in this regard in any particular manner as sought in the terms of the prayers for mandamus by the Applicant.

75. This finding notwithstanding, this Court is granted the inherent powers by section 3A of the Civil Procedure Act to make such orders that are necessary in the interests of justice. Section 11 (1) of the Fair Administrative Action Act also provides as follows as regards the orders this Court can make in judicial review proceedings, which have now been greatly expanded:

(1) In proceedings for judicial review under section 8 (1), the court may grant any order that is just and equitable, including an order-

(a) declaring the rights of the parties in respect of any matter to which the administrative action relates;

(b) restraining the administrator from acting or continuing to act in breach of duty imposed upon the administrator under any written law or from acting or continuing to act in any manner that is prejudicial to the legal rights of an applicant;

(c) directing the administrator to give reasons for the administrative action or decision taken by the administrator;

(d) prohibiting the administrator from acting in particular manner;

(e) setting aside the administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions;

(f) compelling the performance by an administrator of a public duty owed in law and in respect of which the applicant has a legally enforceable right;

(g) prohibiting the administrator from acting in a particular manner;

(h) setting aside the administrative action and remitting the matter for reconsideration by the administrator, with or without directions;

(i) granting a temporary interdict or other temporary relief; or

(j) for the award of costs or other pecuniary compensation in appropriate cases.

76. In this respect, this Court considers it necessary to give alternative remedies in light of the illegality noted in the status of the Respondent's Interim Council, for reasons that the Court cannot ignore and acquiesce to illegalities or errors of law because a particular remedy was not pleaded, or it will cause inconvenience or loss to parties, as to do so would encourage impunity. In addition, even where a Court finds that a particular decision or action was unlawful, it has discretion as to whether or not to grant the remedy sought, and if it does grant a remedy, the nature of the remedy to be granted. One of the factors that comes to play in the exercise of the Court's discretion is the public interest, and in this particular case, the public interest in ensuring proper administration of the law.

77. The remedy of a declaration is therefore considered appropriate in the context of this application, as it is normally granted to state authoritatively the lawfulness of a decision, action or failure to act, the consequences that follow from a quashing order, the existence or extent of a public body's powers and duties, and the rights of individuals or the law on a particular issue. Section 11 (1) (e) and (h) of the Fair Administrative Action Act is also relevant, and permits this court to remit a matter back to the decision maker for reconsideration, and the Respondent can therefore be compelled to act according to the applicable law.

78. In the premises this Court finds that the Applicant's Notice of Motion dated 13th March 2018 is partially merited to the extent of the following orders:

I. An Order of Certiorari be and is hereby issued to bring into this Court for the purposes of quashing, Item 3 on "The Determination of date for election of KISM Council" in the Notice and Agenda of an Annual General Meeting be held on 30th April 2018 that was advertised by the Respondent on 28th February 2018 .

II. A declaration that the current Interim Council of the Respondent is irregularly and illegally in office, arising from non-compliance with the provisions of the Supplies Practitioners Management Act of 2007 as regards its appointment.

III. The arising issue of the regularization of the position and status of the Interim Council, and the issue of the election of the Chairman and six members of the Council of the Respondent be and are hereby remitted to the Respondent for consideration and compliance with the applicable laws within six months of the date of this ruling.

IV. The Respondent shall meet the Applicant's costs of the Notice of Motion dated 13th March 2018.

79. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF JULY 2019.

P. NYAMWEYA

JUDGE