



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO 404 OF 2017**

**KENYA HUMAN RIGHTS COMMISSION.....PETITIONER**

**COMMUNITY ADVOCACY &**

**AWARENESS TRUST (CRAWN TRUST).....2<sup>ND</sup> PETITIONER**

**VERSUS**

**NON-GOVERNMENTAL ORGANIZATIONS**

**CO-ORDINATION BOARD.....RESPONDENT**

**AND**

**LAW SOCIETY OF KENYA.....INTERESTED PARTY**

**JUDGMENT**

1. Kenya Human Rights Commission, the 1<sup>st</sup> Petitioner, is a body co-operate registered under the Non-Governmental Organization Act, 1990, and is devoted to the promotion of Human rights in the country. Community Advocacy Awareness Trust, (**CRAWN TRUST**), is also a non -governmental Organization. The respondent is a Non-Governmental Agency established under the Non-Governmental Coordination Act 1990 and which exercises regulatory authority over all non-governmental organizations in the country.

2. The interested party, **The Law Society of Kenya**, is a professional organization of lawyers in Kenya established under the Law Society Act and mandated to advise the government and the public on legal and constitutional matters.

3. The petitioners state that on 14<sup>th</sup> August 2017, the 1<sup>st</sup> petitioner noticed a letter circulating in the media allegedly written by the Executive Director of the respondent addressed to the 1<sup>st</sup> petitioner's chairperson purporting to cancel the 1<sup>st</sup> petitioner's registration.

4. The petitioners stated that the purported letter deregistering the 1<sup>st</sup> petitioner though widely circulated in both print and electronic media on 14<sup>th</sup> and 15<sup>th</sup> August 2017, was not received by the 1<sup>st</sup> petitioner. The petitioners further stated that on seeing a copy of the letter from the media, the 1<sup>st</sup> petitioner wrote a letter to the respondent on 15<sup>th</sup> August 2017 asking the respondent to confirm or deny the existence of the

letter and sought to have a copy thereof, but no response was received from the respondent. They averred that the 1<sup>st</sup> petitioner managed to obtain a copy of the letter from the media and it contained allegations to the effect that the 1<sup>st</sup> petitioner had allegedly committed some illegal acts including; operating illegal bank accounts, failing to pay tax and employing foreigners without valid work permits among other accusations.

5. The petitioners stated that the 1<sup>st</sup> petitioner is not aware of the allegations and further that it was not given notice of the allegations or called upon to show cause why or even be heard before such a punitive action was taken against it. The petitioners averred that the respondent had made similar allegations against the 1<sup>st</sup> petitioner in 2015 without giving it a hearing and purported to take similar action forcing the 1<sup>st</sup> petitioner to move the Court in **Petition No 495 of 2015** to quash the said decision.

6. The petitioners stated that the respondent acted in contempt of the Court and in total disregard of the law when it attempted to replicate the same action that was declared illegal by the Court and again without giving the 1<sup>st</sup> petitioner an opportunity to be heard. The petitioners stated that the respondent had acted in violation of both the Constitution and the law and even acted **ultra vires** its powers by attempting to direct **Kenya Revenue Authority**, the **Central Bank of Kenya**, and **Director of Immigration**, independent Institutions on what to do in the performance of their duties.

7. The petitioners further averred that the respondent acted in excess of jurisdiction, without jurisdiction and also in gross abuse of its office and the law, that the respondent's actions are in contravention of the Public Benefit organization Act, the NGO Co-ordination Act and the Constitution in purporting to persist with actions that violate Articles 1, 2, and 3 of the Constitution in so far as they require everyone to apply and uphold the Constitution. That it violated Articles 47 and 50 of the Constitution with regard to Fair Administrative Action and Fair Hearing, and Articles 27 and 28 of the Constitution in so far as it acted oppressively and against the 1<sup>st</sup> petitioner's right to dignified and humane treatment.

8. On the basis of the facts stated above, the petitioners filed this petition dated 21<sup>st</sup> August 2017 and sought the following reliefs:-

***(a) A declaration that the adverse actions taken against the Petitioner by the respondent in cancelling its registration, in ordering the freezing of its bank accounts, in ordering the recovery of none-existent taxes from itself and the purported deportation of its foreign staff are unconstitutional and therefore null and void abintio.***

***(b) A conservatory order and/ or a perpetual order of injunction suspending the cancellation of the said certificate of registration and restraining the Respondent by itself, its servants and/or its employees from directing the freezing of the petitioner's Bank accounts, the collection of none – existent taxes and the deportation of its foreign staff.***

***(c) An order of certiorari directing that the letter dated 14/8/2017 cancelling the petitioner's registration be and is hereby quashed.***

***(d) General damages including aggravated and exemplary damages.***

***(e) Costs of its petition and interest thereon and (c) above at court rates***

***(f) Any other relief that this Honourable court may deem fit and just to grant Submissions***

9. Although the petition was served on the respondent, no appearance was entered or response filed. The petition therefore proceeded undefended.

10. Senior Counsel **Mr. Nzamba Kitonga**, submitted on behalf of the petitioners that respondent took action against the 1<sup>st</sup> petitioner through a letter that was only circulated in the media but not served on the

1<sup>st</sup> petitioner. According to learned Senior Counsel, despite the 1<sup>st</sup> petitioner seeking to have a copy of the said letter, the respondent never made it available. Senior Counsel submitted that the respondent had taken a similar action against the 1<sup>st</sup> petitioner in 2015 but it was nullified by the Court. According to Senior Counsel, the respondent was reenacting the nullified action through the impugned letter of 14<sup>th</sup> August 2017.

11. Learned Senior Counsel contended that the 1<sup>st</sup> petitioner has been in existence for over 25 years with a staff of over 150 people yet the respondent purported to cancel its registration in a more casual manner in total disregard to law. Learned senior counsel argued that it is a requirement under Article 50 of the Constitution that before an adverse action is taken against a person or body, the affected party must be afforded an opportunity to be heard. According to Senior Counsel, the respondent did not even attempt to follow the repealed **NGO Co-ordination Act** but subjected the 1<sup>st</sup> petitioner to a process that is a kin to mob justice by simply cancelling its registration without any pretence of affording it some form of a hearing.

12. In Senior Counsel's view, had the respondent attempted to apply the repealed NGO Co-ordination Act, it would have had to read it as incorporating constitutional requirements and the principles of natural justice. Mr. Gitonga went on to submit that the **NGO Co-ordination Act** was repealed and replaced by the **Public benefits authority Act**, and that by virtue of that repeal, the respondent's alleged existence is not based on any law and its officials have no legal standing at all.

13. In that case Learned Counsel submitted, the respondent's action against the 1<sup>st</sup> petitioner is **ultra vires** the Constitution and applicable laws. He contended that in purported exercise of power and obsessed with illusion of grandeur, the Executive Director of the respondent purported to "**order**" **Instruct**" and "**direct**" independent institutions such as Kenya Revenue Authority , the Central Bank of Kenya, and the Director of Immigration to collect taxes, freeze bank accounts, depot expatriates and investigate the 1<sup>st</sup> petitioner, actions that were **ultra vires** the respondent's powers.

14. On Article 47 of the Constitution, learned senior counsel submitted that public bodies are required to observe fair administrative actions and practices as required by that Article as amplified by the Fair Administrative Action Act, 2015 which contains stringent and elaborate procedures to be observed by Public bodies whenever they take administrative actions by observing the principles of fair hearing and natural justice.

15. Mr Gitonga submitted that failure to observe due process violated Article 47 of the Constitution and the Fair Administrative Action Act. Senior Counsel contended that the respondent made a grave announcement that the petitioner had engaged in criminal activities including operating illegal bank accounts, false accounting, illegal employment of expatriates, misappropriation of donor funds and tax evasion, grave offences of economic crime. Leaned senior counsel argued that the petitioner was not given a hearing yet the respondent made such a conclusion and announcement to the whole world even before informing the petitioner of the intention to make such an announcement.

16. According to Senior Counsel, the respondent had simply engaged in brazen and unlawful actions, behaved in uncivilized, capricious, oppressions and high handed manner thus violated values and principles of the constitution. Learned counsel contended that this was not an isolated misadventure arguing that the respondent had taken a similar action in 2015 before it was stopped by the Court in **Kenya Human Right Commission v NGO Coordination Board Petition No 495 of 2015**. Learned senior counsel urged the Court to grant damages contending that the respondent had in a way defamed the petitioner by telling the word that it had engaged in criminal activities which causing the petitioner irreparable loss and suffering as well as violated its constitutional rights.

17. Senior Counsel contended that the petitioner had not only acted in bad faith but also in contempt of Court. He urged the Court to award Ksh80,000,000 in general, aggravated and exemplary damages.

### ***Interested Party's Submissions***

18. The interested party filed written submissions dated and filed in Court on 8<sup>th</sup> November 2017. The interested party fully associated itself with the petitioner's submissions. The interested party in particular agreed with the petitioner that the respondent failed to comply with the right to Fair Administrative Action under Article 47 of the Constitution and the Fair Administrative Action Act, 2015.

19. The interested party pointed out that section 4(3) of the Fair Administrative Act requires that where an administrative Action is likely to adversely affect the rights and fundamental freedoms of a person the administrator should give the person to be affected by the decision prior and adequate notice on the nature and reasons for the intended action, an opportunity to be heard and make representations.

20. The interested party submitted that the respondent informed the petitioner of the cancellation of its registration but did not give the petitioner an opportunity to be heard before the action was taken. The interested party therefore contended that the notice of cancellation of the petitioner's registration was unreasonable, procedurally unfair and contrary to Article 47 of the Constitution thus unlawful.

21. The interested party further contended that the petitioner's right to fair hearing and presumption of innocence guaranteed under Article 50 of the constitution was violated. In the interested party's view, the petition could not answer any allegation against it, if it was not given sufficient notice to respond. The interested party submitted that every time there is failure to follow the letter and spirit of the constitution itself, it breeds cynicism and encourages impunity especially where such failure stems from a deliberate effort to undermine the Constitution.

22. According to the interested party, Article 47 intends to bring discipline to administrative actions so that values and constitutional principles are infused in matters of public administration under Article 10, especially where one applies or interprets the Constitution, enacts, applies or interprets any law or makes or implements public policy decisions.

23. In that regard, the interested party submitted that in order to advance the purpose of Article 10, the respondent's action must not only be lawful and founded on the law it must also not be capricious or whimsical. The interested party therefore submitted that the respondent's action is unconstitutional but also adversely affects the petitioner's operations. According to the interested party, the requirement for Fair Administrative Action is entrenched in the Constitution as a control over the exercise of power. The interested party relied on the decision in the case of **Kenya Human rights Commission v NGO coordination Board** Petition No 495 of 2015 and urged that the Court to allow the petition.

### ***Determination***

24. I have considered this petition, submissions on behalf of the petitioners and the interested party as well as the authority relied on. Although the petition was served, the respondent did not enter appearance or file a response. Mr. Kuria who appeared for the respondent informed the Court that he did not file a response to the petition because of lack of instructions. Learned counsel intimated to Court that although he had received a letter from the respondent on 10<sup>th</sup> August 2017 instructing him to act in the matter, no pleadings were forwarded to him even after he called for them.

25. Learned counsel told the Court that he raised the issue with the respondent's CEO through letter dated 31<sup>st</sup> October 2017 but even as at the time of hearing, he had not received instructions. He also informed the Court that he had even drawn the respondent's attention to the judgment in ***petition No 495 of 2015*** but received neither a response nor instructions over the matter and therefore, could not defend the case and never applied for an adjournment.

26. The respondent issued a letter dated 14<sup>th</sup> August 2017 addressed to the 1<sup>st</sup> petitioner's Chairperson and signed by ***Fazul Mohamed***, the Executive Director of the respondent notifying the chairperson of cancellation of the 1<sup>st</sup> petitioner's registration certificate on a number of grounds. Some of these were that the 1<sup>st</sup> petitioner had opened and was operating bank accounts contrary to provisions of the Act, failure to pay statutory taxes to KRA, that the 1<sup>st</sup> petitioner had employed expatriates without valid work

permits, and concealment of illegal remuneration to Board members among others.

27. In that letter, **Mr. Fazul Mohammed** went ahead to advise Governor of Central Bank to freeze and preserve all funds held in the 1<sup>st</sup> petitioner's accounts, advised the Commissioner General of KRA to initiate the process of recovering accrued taxes from the 1<sup>st</sup> petitioner, and the Director of Immigration to immediately deport all foreigners working with the 1<sup>st</sup> petitioner without valid work permits.

28. It would appear the 1<sup>st</sup> petitioner was deregistered without being accorded an opportunity to be heard as required by Article 47 of the Constitution, despite the fact that it has been operating in Kenya for over 25 years. The 1<sup>st</sup> petitioner says it had all along complied with the law and regulations throughout its operations, a fact that was uncontroverted since the respondent never filed a response to the petition.

29. The 1<sup>st</sup> petitioner was registered under the NGO Co-ordination Act. The respondent's action to deregister or cancel the 1<sup>st</sup> petitioner's registration was an administrative action that affected the petitioner's right to exist and operate within the country. The action was taken pursuant to the provisions of that Act.

30. Section 3 of the Act establishes the **NGO Co-ordination Board** whose functions are provided for under section 7 of the Act. Section 10 of the Act deals with registration of non- governmental organizations. Section 16 thereof deals with cancellation of registration certificates of NGOs registered under that Act. It provides;

***(1)The Board may cancel a certificate issued under this Part, if it is satisfied that—***

***(a) the terms or conditions attached to the certificate have been violated; or***

***(b) the organisation has breached this Act; or***

***(c) the Council has submitted a satisfactory recommendation for the cancellation of the certificate.***

***(2) Notice of the cancellation of a certificate shall be served on the Organisation in respect of whom such cancellation relates and shall take effect within fourteen days after the date of that notice.***

31. The section is clear that the notice for cancellation must be served to the Non -governmental organization concerned and would only take effect after 14 days of the notice. Section 19(1) provides for the procedure for appealing against such a decision. It provides that **any organization which is aggrieved by the decision of the Board made under this Part may, within sixty days from the date of the decision, appeal to the Minister.** Under section 19(3) the minister is required to issue a decision on such appeal within thirty days from the date of the appeal. Any aggrieved organization may thereafter appeal to the High Court and the Court's decision will be final.

32. The law governing non- governmental organizations is therefore clear that any action taken against a non -governmental organization must be in accordance with the law because it is only then that an aggrieved party can exercise the right of appeal provided for in the Act. Such actions being administrative in nature are also subject to the Constitution.

33. Article 47(1) of the Constitution is in mandatory terms that ***every person has a right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.*** Sub Article 2 makes it even more forceful that ***if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for that action.***

34. Article 260 of the Constitution defines a ***“Person”*** to include a company, association or other body of

persons whether incorporated or not. In that regard, the 1<sup>st</sup> petitioner is a person for purposes of Article 47 of the Constitution in that its right as an entity was adversely affected by the respondent's impugned decision and was therefore entitled to an administrative action that was not only procedurally fair and lawful but also reasonable. It was equally entitled to a hearing before the adverse action was taken against it.

35. The Constitution is the **Supreme law** of the Republic and decrees as such in Article 2(1). It binds all persons and all state organs in the course of performing their duties. The provisions in Article 47 to the extent that they require that an administrative action to be expeditious, fair, lawful and reasonable, and that where such an action adversely affect a person's right or fundamental freedom, the affected person is entitled to be given written reasons for the action, is a constitutional control over administrative bodies to ensure that they do not abuse their power and that individuals concerned receive fair treatment when actions are taken against them. Failure to observe this constitutional decree, for all intent and purposes, undermines the rule of law and the value of **Article 19(1)** of the **Constitution** which states that the Bill of Rights is an integral part of Kenya's democratic state as the framework for social, economic and cultural policies..

36. The petitioners stated as well as deposed that the notice of cancellation of the 1<sup>st</sup> petitioner's registration was not served. They stated that they learnt of the action through the print and electronic media and only obtained a copy of the letter from the same media. The 1<sup>st</sup> petitioner further stated that even though it sought to have a copy of the letter and reasons for cancellation of its registration, none was made available. It remains unexplained why the respondent, if it believed in the legality of its actions to deregister the 1<sup>st</sup> petitioner, did so through the media instead of giving the letter conveying the decision and reasons for the action to the 1<sup>st</sup> petitioner as required by section 16 of the Act.

37. The fact that the right to Fair Administrative Action is a constitutional right was stated by the **Constitutional Court of South Africa** in the case of **President of the Republic of South Africa and Others v South African Rugby Football Union and Others** (CCT16/98) 2000 (1) SA 1, that;

*“Although the right to just administrative action was entrenched in our Constitution in recognition of the importance of the common law governing administrative review, it is not correct to see section 33 as a mere codification of common law principles. The right to just administrative action is now entrenched as a constitutional control over the exercise of power. Principles previously established by the common law will be important though not necessarily decisive, in determining not only the scope of section 33, but also its content. The principal function of section 33 is to regulate conduct of the public administration, and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common law principles developed over decades...”*

38. The importance of this right to fair administrative action as a constitutional right in our Article 47 cannot be over emphasized. The Court of Appeal stated in the case of **Judicial Service Commission v Mbalu Mutava & another** [2014] eKLR; that;

*“Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by Article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.”*

39. And in the case of **Dry Associates Ltd v Capital Markets Authority and Another**, [2012] eKLR the

**Court observed;**

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

40. Taking the above jurisprudence into account, there is no doubt in my mind, that acting as it did, the respondent violated 1<sup>st</sup> petitioner’s right to a fair Administrative Action contrary to Article 47 of the Constitution. Administrative Actions that flow from statutes, must now meet the constitutional test of ***legality, reasonableness*** and ***procedural fairness***. According a party a hearing before taking action against him is no longer discretionary. It is firmly entrenched in our Constitution as an inviolable right. It is an important safeguard against capricious and whimsical actions that lead to abuse of authority by public bodies exercising administrative and quasi-judicial functions. These no longer have place in our constitutional dispensation.

41. This Court can only emphasize that it is no longer even a mere legal requirement but a constitutional one that a person is entitled to be heard and that the action to be taken should meet the constitutional test. Those taking administrative actions are bound by this constitutional decree failure of which renders their actions unconstitutional, null and void.

42. Any time the respondent purports to exercise its powers under section 16 of the NGO Co-ordination Act, it must realized that we are in the post 2010 era and must observe constitutional dictates, let alone the provisions of the Act and regulations made thereunder. The respondent must always be alive to the provisions of ***section 7(1) of the Sixth Schedule*** to the Constitution that ***“all law in force immediately before the effective date continues to be in force but shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this constitution.”***

43. That is to say when applying the NGO Co-ordination Act, the respondent has to act in a manner that is in conformity with and not in contravention of the Constitution. The respondent purported to take action to cancel the 1<sup>st</sup> petitioner’s registration in a raft of allegations but which it failed to defend in this petition. I have seen the purported notice of cancellation. It does not state when the alleged failures on the part of the 1<sup>st</sup> petitioner took place. They are more of general than specific allegations to amount to a breach of the law.

44. The notice itself did not even state if and when the respondent carried out investigations and came to the conclusion that the 1<sup>st</sup> petitioner’s conduct violated the conditions upon which it was registered. It is only after investigations and the 1<sup>st</sup> petitioner given a chance to rebut any allegations made against it about certain failures, that the respondent could make a determinate conclusion in the nature of blame against the 1<sup>st</sup> petitioner. I therefore find and hold that the respondent’s action violated the 1<sup>st</sup> petitioner’s right to fair Administration Action contrary to Article 47 of the Constitution, the Fair Administration Action Act and the NGO Co- ordination Act.

45. That is not all. It is even worrying that ***Mr. Fazul Mohamed*** took it upon himself to play roles reposed on other independent institutions and purported to advise them on what to do. For instance, he advised the ***Governor of the Central Bank*** to freeze the 1<sup>st</sup> petitioner’s bank accounts. Central Bank of Kenya is established under Article 231(1) of the Constitution. Under Article 231(2) ***the Central Bank is responsible for formulating monetary policy, promoting price stability, issuing currency and performing other functions conferred on it by an Act of Parliament***. Sub-Article (3) is clear that ***The Central Bank of Kenya is not to be under the direction or control of any person or authority in the exercise of its powers or in the performance of its functions***.

46. To that extent, the Central Bank of Kenya is an independent institution that does not work on anybody’s advice or direction and does not perform its functions or conduct its business under any one’s direction.. In that regard therefore, the respondent’s Executive Director acted outside his mandate in

advising the **Central Bank** to freeze the 1<sup>st</sup> petitioner's bank accounts. Its actions were thus **ultra vires**. More over even if the respondent had acted within its powers, it did not point out which bank accounts had been illegally opened or operated by the 1<sup>st</sup> petitioner. It would appear the respondent was only interested in paralyzing the 1<sup>st</sup> petitioner's operations than enforcing the law. Neither were the actions in public interest nor in pursuit of justice.

47. This is even so because the respondent's Executive Director further advised the **Commissioner General of KRA** to recover taxes from the 1<sup>st</sup> petitioner without stating how he knew that there were taxes due. Just like the Central Bank, the Commissioner General of KRA did not require advice from the respondent on how to recover taxes and from whom. KRA is established under section 3(1) of the KRA Act, and as the general agent of government responsible for assessing and collecting revenue from tax payers, it has its own legal framework through which it determines whether or not tax is due, from which tax payer and how to collect it.

48. Further still, the respondent's Executive Director purported to advice the Director of Immigration to deport unknown and unidentified persons who were said to be working with the 1<sup>st</sup> petitioner without valid work permits. The respondent's Executive Director did not state that he had conducted any investigations on the 1<sup>st</sup> petitioner's operations and staff and could not therefore purport to state without evidence, that the 1<sup>st</sup> petitioner was on the wrong said of the law. And as I have stated earlier, the respondent's actions were to that extent, meant to paralyze the 1<sup>st</sup> petitioner's operations that is why **Mr. Fazul Mohamed** purported to direct institutions that do not fall within the respondent's mandate. The cumulative effect of the respondent's misadventure rendered its actions **ultra vires, illegal, null and void**.

49. Learned Senior Counsel drew this Court's attention to the fact that the respondent had acted in a similar manner in 2015, an action that was successfully challenged in **petition No 495 of 2015, Kenya Human Rights Commission v NGO Co-ordination Board & 2 Others [2016]eKLR** and the Court nullified the respondent's decision to deregister the 1<sup>st</sup> petitioner on allegations similar to those in the present petition. He urged the Court to award damages for the respondent's wrongful actions.

50. Senior Counsel argued that the respondent took an action similar to one the Court had nullified hence it was acting in contempt of the Court's judgment. In Learned Senior Counsel's view, an award of damages would be appropriate. Senior Counsel contended that the respondent's action was made in bad faith aggravating its actions and urged for an award of Ksh. 80,000,000 general, aggravated and exemplary damages as a deserving remedy in the circumstances.

51. I have perused the facts of the case as contained in the judgment in **petition No. 495 of 2015**. It is true that the circumstances of that case are similar to those in the petition before this Court. Indeed after hearing that petition, the Court (**Onguto J**) held:-

***"In the circumstances and in conclusion, I return the verdict that in as far as the Respondent did not give the Petitioner any hearing prior to arriving at the decision to cancel the Petitioner's registration certificate and seek that the Petitioner's bank accounts be frozen, the Petitioner's rights under Article 47 of the Constitution were violated. This was compounded further when the Respondent failed to give written reasons for its decisions"***

52. The respondent had made a decision to cancel the 1<sup>st</sup> petitioner's registration without according her a hearing just as it did in the present petition. The respondent had also asked that the 1<sup>st</sup> petitioner's bank accounts be frozen which is the same in this petition. Looking at the facts of the previous litigation and those in the petition before me, there is no doubt that they are similar. I have also noted that the 1<sup>st</sup> petitioner sought reasons for the respondent's action but none was given. The respondent was equally served but filed no response to this petition leaving the petitioners' averments and depositions uncontroverted.

53. In my respectful view, this was a case of abuse of power by a public officer and or body. The

respondent cannot act as though there is no law in this country. Rights have inherent value and must be enhanced, respected and protected. In that regard, Article 21(1) of our Constitution states in plain language that **it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.**

54. The Court of Appeal had much to say on the value attached to rights and fundamental freedoms in our Bill of Rights in the case of **Attorney General v Kituo cha Sheria & 7 others [2017] eKLR** when it stated;

**“Quite beyond argument then, the Bill of Rights in Kenya’s constitutional framework is not a minor peripheral or alien thing removed from the definition, essence and character of the nation. Rather, it is said to be integral to the country’s democratic state and is the framework of all the policies touching on the populace. It is the foundation on which the nation state is built. There is a duty to recognize, enhance and protect the human rights and fundamental freedoms found in the Bill of Rights ...The clear message flowing from the constitutional text is that rights have inherent value and utility and their recognition, protection and preservation is not an emanation of state largesse because they are not granted, nor are they grantable, by the State...respecting rights is not a favour done by the state or those in authority. They merely follow a constitutional command to obey.”(Emphasis)**

55. It cannot be the case therefore, that state organs, administrative bodies or public officers should act in flagrant disobedience and or violation of the Constitution and laws of the land. They have an obligation to obey the Constitutional command and the law and in the event they violate any of them, their actions will in no doubt be declared unconstitutional and illegal. That is why Article 23 of the Constitution grants Courts of this country authority to step in whenever there is allegation of violation or threat to violation of rights and fundamental freedoms in the Bill of Rights and grant appropriate reliefs. In a case like this, the role of the court to protect citizens against the excesses of public bodies and their officialdom becomes all the more important.

56. In the case of **Tinyefuze v Attorney General of Uganda [1997] UGCC3**, the Constitutional Court of Uganda observed that **the provisions in the Constitution touching on fundamental rights ought to be construed broadly and liberally in favour of those on whom the rights have been conferred by the Constitution and that if a petitioner succeeds in establishing breach of a fundamental right, he is entitled to the relief in exercise of Constitutional jurisdiction as a matter of course.**

57. I entirely agree with the above observation and add that where there is a breach of fundamental rights and or abuse of power, this Court has the authority to grant compensation for it by exercising its jurisdiction under Article 23 (3) (b) of the Constitution which confers authority **courts to grant appropriate relief, including an order for compensation.**

58. I am satisfied beyond doubt that the petitioners have succeeded in establishing that there was breach of a fundamental right. They have also established that the respondent had taken an action against the 1<sup>st</sup> petitioner similar to one that had been nullified by the Court in **Petition No. 495 of 2015** . Despite that fact, the respondent purported to take similar action, the judgment in **Petition No. 495 of 2015** notwithstanding. Learned counsel, Mr. Kuria even informed the Court that he had drawn the respondent’s attention to that judgment but was apparently ignored. Such conduct was inexcusable, amounted to abuse of power and must not be allowed in a democratic state founded on national values and principles of governance in our Constitution. It undermines the rule of and constitutionalism. Public officers and state organs must obey the Constitution and the law. When they do not, the Constitution has granted courts power to intervene and remedy such breaches.

59. In the circumstances of this case, I find that an award of damages is justified, a demonstration that Courts frown upon violation of the law and abuse of power reposed on public officers. In this case I must find disfavour with the respondent’s conduct of cancelling the 1<sup>st</sup> petitioner’s registration thus closing its operations in total disregard of the Constitution and the law, a conduct that was contemptuous to a decision of the Court. As to quantum, I consider general damages of Kenya Shillings two million

appropriate.

60. Ultimately and for the above reasons, the petition dated 27<sup>th</sup> August 2017 is allowed as follows;

*(a) A declaration is hereby issued that the adverse actions taken by the respondent in cancelling the 1<sup>st</sup> petitioner's registration, ordering the freezing of its bank accounts, ordering recovery of none-existent taxes from the 1<sup>st</sup> petitioner and the purported directive for deportation of the 1<sup>st</sup> petitioner's foreign staff are unconstitutional and therefore null and void.*

*(b) An order of certiorari is hereby issued quashing the respondent's letter dated 14<sup>th</sup> August 2017 cancelling the 1<sup>st</sup> petitioner's registration.*

*(c) The respondent do pay General damages of Ksh 2,000,000 to the 1<sup>st</sup> petitioner.*

*(d) Costs and interest to the 1<sup>st</sup> petitioner.*

**Dated Signed and Delivered at Nairobi this 2<sup>nd</sup> Day of February 2018**

**E C MWITA**

**JUDGE**