



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW NO. 161 OF 2016

IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM, ACT CAP 26

AND

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

AND

**IN THE MATTER OF AN APPLICATION BY NYAMBARI TRADERS WELFARE
ASSOCIATION FOR LEAVE TO APPLY FOR AN ORDER OF MANDAMUS**

NYAMBARI TRADERS & WELFARE ASSOCIATIONAPPLICANT

VERSUS

THE COUNTY GOVERNMENT OF KIAMBU.....1ST RESPONDENT

THE KIAMBU COUNTY EXECUTIVE COMMITTEE MEMBER RESPONSIBLE FOR

ADMINISTRATION & PUBLIC SERVICE2ND RESPONDENT

LARI SUB-COUNTY ADMINISTRATOR3RD RESPONDENT

JUDGMENT

1. On 12th April 2016 the exparte applicant herein Nyambari Traders & Welfare Association was granted leave of court to institute Judicial Review proceedings of Mandamus and on the 21st April 2016 vide notice of motion dated 18th April 2016 the exparte applicant filed the substantive notice of motion seeking for:

1. An order of mandamus directed to the respondents the Kiambu County Government, the Lari County Administrator and the County Executive Committee member responsible for Administration and Public Service, to do the following within Nyambari Shopping Centre:

- a. Install security lights
- b. Improve the drainage system.

c. Provide for ways and means in which the garbage should be collected.

d. Issue affordable licences

e. The general maintenance of infrastructure and facilities of public services in the sub county.

2. An order restraining the respondents from further demanding the licence fees from the applicant until the actions in (1) above are taken.

3. An order for costs

4. Such further and other relief be granted to the applicant as this court deems fit.

2. The notice of motion was supported by the grounds set out in the statutory statement and verifying affidavit of Paul K. Ngugi sworn on 6th day of April 2016 accompanying the application for leave to apply.

3. The ex parte applicant's case is that it is a Traders Welfare Association registered on 12th April 2011 under the Societies Act Cap 108 Laws of Kenya and vide Registration No. 34117.

4. That on 21st January 2015 a meeting was held between the applicant and the respondents with a view to addressing the issues facing the applicant in the course of carrying out their business within Lari Sub county, and that the traders attended the meeting as shown by the attached minutes.

5. That in the said meeting, the issues discussed were that:

a. There was no security lights at the Nyambari Shopping Centre. As a result, there has been an increase in insecurity in the centre;

b. Their drainage system was in bad shape and a health hazard to the community at large.

c. That there were no means and ways as to how garbage was to be collected within the Nyambari Shopping Centre.

d. The licences fees was too high for the traders.

6. According to the applicant, the said meeting agreed that

1. The County Administrator was to ensure that security light had been installed at Nyambari Shopping Centre in less than three(3) months from the date of the meeting;

2. In view of the poor drainage system, the County Administrator expressly stated that immediate action was to be taken;

3. In the case of garbage collection, a lorry for garbage collection was to be provided for Lari Sub County;

4. The County Administrator further urged the traders to pay licence fees to enhance the services rendered to them at the shopping centre within 6 months from the date of the meeting.

7. That following the said agreement, the applicant's members paid the licence fees but that the respondents have refused to comply with the agreement as per the meeting and have persisted in their refusal to provide the said services to the applicant traders.

8. In response to the notice of motion, the respondents filed a replying affidavit on 6th June 2016 sworn by Joseph Wanyoike who is the acting Chief Officer, Administration and Public Service at the County Government of Kiambu who deposed on 3rd June 2016 that in order for the business to operate, the applicant's members must take out a single permit and or a licence at a fee prescribed by that year's Finance Act and that it is such fee paid that enables the County Government to make appropriate arrangements to ensure that it can deliver various services with the resources that it collects and those disbursed by the National Government.

9. According to Wanyoike, the money collected is used for both development and recurrent expenditure to cater for salaries and wages, fueling of vehicles among other forms of recurrent expenditure, and that money for development is normally structured during the budgeting process hence it is not automatic that the money collected from licences is used for development of the area during that financial year.

10. In addition, it was deposed that Mandamus cannot issue for affordable licence fees since the money collected is in accordance with the fees prescribed for the licences by law which is the Kiambu County Finance Act, 2015/2016 and which law is legally binding on the applicants since they participated in the enactment of the said Act through public participation forum organized by the County Government Executive and the County Assembly.

11. It was therefore contended that the issue for affordable licences can only be considered in the legislative making process and not through mandamus proceedings which orders if issued by the court, would be interfering with the independence of the County Government to make laws which independence is protected by the Constitution.

12. On the issue of garbage collection, it was contended that the County Government had provided trucks to collect and dispose off waste that is generated. It was further deposed that waste management was an obligation of the applicants.

13. Further, the respondents contended that security lights had been procured and delivered to the applicant's business premises but that an attempt to fix or install the said security lights was inhibited by the applicant traders who claimed that they did not approve of the size that had been procured and demanded to be provided with an alternative security light.

14. In addition, it was deposed by the respondents that the generalized maintenance of infrastructure and facilities within Lari Sub County may be untenable as some of the infrastructure functions fall under the jurisdiction of the National Government.

That the prayer for maintenance of infrastructure in the sub county is not specific hence the orders would be made in vain as it is not clear which infrastructure is sought to be maintained, besides the fact that the development of the county is guided by a philosophy that development is done progressively and within the law.

16. Further, that in this case it had not been shown that the respondent's actions had been guided by an illegality or that they were irrational to warrant the orders sought.

17. The respondents urged this court to dismiss the notice of motion. The parties' advocates filed written submissions which they highlighted by way of oral submissions on 11th October 2016.

18. The ex parte applicant filed its submissions on 5th September 2016 whereas the respondent's submissions were filed on 26th September 2016.

19. According to the ex parte applicant, the respondents are under a statutory duty to perform their obligations under the law and that parties having met in 2015 and agreed to tackle the issues raised, subject matter of these proceedings, there has since been no indication that the respondents are ready to

perform their duties hence the need to compel them to perform their said duties.

20. According to the *exparte* applicants, security lights were installed but are substandard and are not able to illuminate the whole trading area.

21. Further, that the respondents charge hefty trading licences to raise revenue for the County Government but that that revenue is not being used to deliver effective services, contrary to Section 75(b) of the Constitution.

22. The applicants therefore urged the court to grant the orders sought in the notice of motion, since the situation is dire on the ground.

23. They also relied on the provisions of the Constitution on the functions of the County Government which include refuse removal, refuse dumps and solid waste disposal; street lighting, public road, trade licences; and water and sanitation services.

24. The applicant also relied on Section 5 of the County Government Act on the functions of the County Government.

25. Reliance was placed on **KNEC vs Republic *exparte* Geoffrey Gathenji & 9 Others CA 266/96** cited with approval in **Republic vs Kenya Vision 2030 Delivery Board & Another *Exparte* Engineer Judah Abekah[2015] eKLR** on the scope of the Judicial Review orders of mandamus.

26. Further reliance was placed on Article 174(f) of the Constitution on the object of a devolved Government and Article 175 (b) of the Constitution on the principles that County Governments should reflect.

27. The case of **Republic vs National Land Commission & 2 Others *exparte* Grove Development Ltd [2015] eKLR** was also relied on in reference to the Judicial Review orders of prohibition.

28. On the other hand, the respondents filed submissions on 26th September 2016 and as highlighted by Mr Ranja who is the Senior Legal Counsel to the respondents, counsel submitted on three framed issues namely:

- a. Whether an order of mandamus ought to issue against the respondents in the present circumstances;
- b. Whether the court ought to grant an order of prohibition as couched in prayer 2 of the notice of motion dated 18th April 2016.
- c. Whether the applicant is entitled to the reliefs sought.

29. On the prayer for mandamus, it was submitted that albeit the 4th schedule to the Constitution has given the respondents functions as outlined by the applicant, those functions are to be performed by discretion and that therefore the court cannot command the respondents on how to exercise their discretion.

30. Mr Ranja submitted that the respondents provided security lights and that there exist a drainage system.

31. Further that the County Government plans on how to execute its duties hence if mandamus issues, it will interfere with the manner of exercising discretion by the respondent.

32. On the prayer for prohibition, it was submitted on behalf of the respondents that the prayer was couched in an injunctive manner to restrain demand for licence fees from the applicants. That

prohibition only stops future actions not what is happening. Further, that there is no prayer for certiorari to quash the decision to demand for licence fees.

33. It was submitted that it is the Kiambu County Finance Act which permits collection and or levy of licence fees in accordance with Article 210 of the Constitution and if prohibition issues, it will quash the Finance Act for the County yet there is no challenge to that Act before this court, and that in any event, the applicant's traders participated in the making of the said Finance Act.

34. Mr Ranja urged the court to dismiss the ex parte applicant's notice of motion with costs.

Determination.

35. I have carefully considered the ex parte applicant's notice of motion which is brought on behalf of the Nyambari Traders & Welfare Association. I have also considered the replying affidavit in opposition to the said application and the submissions on behalf of both parties by their respective counsels on record, supported by constitutional provisions as well as case law and statutory provisions.

36. Article 6(1) of the Constitution of Kenya, 2010 provides that the territory of Kenya is divided into the counties specified in the First Schedule.

37. The First Schedule establishes 47 Counties and County No. 22 under the First Schedule is Kiambu County.

38. The Constitution also stipulates functions for the counties as well as those for the National Government under the Fourth Schedule pursuant to Articles 185(2), 186(1) and 187(2) of the Constitution.

39. The functions of the County Governments include, and material to this case:

1.

2. County health services including in particular:

(g) refuse removal, refuse dumps and solid waste disposal.

3. Control of air pollution, noise pollution, public nuisances and outdoor advertising.

5. County transport including-

a. County roads;

b. Street lighting.

c.

d. Public road transport

7. Trade development and regulations including:

a. Markets;

b. Trade licences (excluding regulation of professionals)

c. Fair trading licences

11. County public works and services, including-

- a. Storm water management systems in built up areas; and
- b. Water and sanitation services

40. The Constitution, in creating Devolution also stipulated the objectives of Devolution and the principles of devolved government in Articles 174 and 175 respectively.

41. The objectives of Devolution are:

- a. To promote democratic and accountable exercise of power;
- b. To foster national unity by recognizing diversity;
- c. To give powers of self governance to the people and enhance the participations of the people in the exercise of the powers of the state and in making decisions affecting them;
- d. To recognize the right of communities to manage their own affairs and to further their development.
- e. To protect and promote the interests and rights of minorities and marginalized communities.
- f. To promote social and economic development and the provision of proximate easily accessible services throughout Kenya;
- g. To ensure equitable sharing of national and local resources throughout Kenya;
- h. To facilitate the decentralization of state organs, their functions and services, from the capital of Kenya; and
- i. To enhance checks and balances and the separation of powers.

42. The principles of devolved government are as stipulated in Article 175 of the Constitution:

- a. County Governments shall be based on democratic principles and the separation of powers;
- b. County Governments shall have reliable sources of revenue to enable them govern and deliver services effectively and
- c. No more than 2/3 of the members of representative bodies in each county government shall be of the same gender.

43. Besides the above constitutional provisions on the functions, powers and principles that govern county governments, the County Governments Act No. 17 of 2012 also provides for additional functions of the County Government, in addition to the powers, functions and responsibilities granted or bestowed by the Constitution on the County Governments. Among those statutory functions are:

- I. County legislation in accordance with Article 185 of the Constitution;
- II. Exercising executive functions in accordance with Article 183 of the Constitution;
- III. Functions provided for in Article 186 and assigned in the Fourth Schedule of the Constitution.

44. From the above constitutional and statutory provisions, it is clear as correctly submitted by the exparte applicant's counsel that the installation of security lights, improvement of drainage system,

provision of water ways and garbage collection as well as issuance of licences and regulation thereof and the county roads, public transport, regulation of markets and fair trading practices are functions of county governments.

45. It is not in dispute that the respondent did have a meeting with the ex parte applicants traders and in that meeting of 21st January 2015 it was mutually agreed that the applicants herein would pay licences in return for adequate services within six months; the respondents to take action on drainage ; to provide a lorry for garbage collection, the County Surveyor and Planner to clear pathways; install security light within the shopping centre within three months; the applicant to consider the reduction of farm produce tax and report to the Sub County administrator of Lari Sub County; provide a market place; and to consult the necessary departments for action on stage management and earmarking of highway where there is junctions.

46. The only question in this matter therefore, it whether the ex parte applicants are entitled to the Judicial Review orders sought in the notice of motion dated 21st April 2016.

47. In the said notice of motion, the ex parte applicants seek for Judicial Review orders of Mandamus directed to the respondents to perform their constitutional and statutory functions/powers and responsibilities as reproduced herein above in this judgment and an order restraining the respondents from further demanding the license fees from the applicants until the actions as stipulated are taken.

48. The respondents have resisted this application and the prayers sought on the grounds that they cannot be restrained from levying licence fees as it is their constitutional and statutory mandate to levy such fees and secondly, that licence fee is as stipulated in the County Finance Act which is binding on the applicants as they participated in its enactment through public participation fora and that as the applicants have not sought to have that Act declared unconstitutional, then they cannot ask for a reduction or injunction or even a prohibition in the enforcement of that Act which is enacted annually and that what is currently in force is the Act for the 2016/2017 financial year.

49. Secondly that mandamus cannot issue as it is a discretionary remedy and that the County Government of Kiambu is exercising its powers and functions in a discretionary manner hence it cannot be compelled to perform those functions or to exercise those powers in a certain way, or at once since resources are meant for other purposes such as recurrent expenditure and development which is based on planning hence an order of mandamus would not be an effective remedy.

50. In addition it was contended by the respondent that it has performed some of the functions like installing street lights which the applicant claim is not sufficient, and that the applicants are expected to contribute to the performance of some of the functions such as garbage collection where the applicants are to pay those garbage collectors licensed by the respondents

51. The respondents further contended that prohibition cannot be granted as couched and that as the decision to levy licence fees had already been taken, there can be no prohibition without first quashing that decision yet the applicant has not sought to quash that decision.

52. On whether mandamus is available to the applicants in the circumstances of this case, it is critical to analyse circumstances under which mandamus would issue. In other words, the court must set out the scope of the Judicial Review order of mandamus in order to establish whether mandamus lies. The case of **Republic Vs Kenya National Examinations Council Ex parte Gathenji CA 266/1996** instructive. In the above case, the Court of Appeal stated:

“...The order of mandamus is the 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 compels 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 person has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed the duty. 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 wrongly performed according to the law; then mandamus is wrong remedy to apply for because, like an order of prohibition, 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 courts wants to say on that aspect of this matter.”

53. From the above decision which has gained public notoriety as far as the scope of Judicial Review orders as far as the three traditional remedies of mandamus, certiorari and prohibition are concerned, it is clear that an order of mandamus cannot be sought in order to quash a decision. It cannot also be sought to compel the exercise of a decision in a certain manner. And where a decision has already been made, unless that decision is quashed, mandamus would not be an efficacious remedy.

54. In other words, where a decision has been made and that decision is being challenged, in the absence of a prayer for certiorari to quash that decision, mandamus cannot stand alone without certiorari.

55. Therefore, a party ought not to seek for a mandamus order in such a manner as to achieve what ought to have been sought by way of certiorari.

56. In the instant case, both the applicant's side and respondent's side have relied on the above notorious case of **Republic V KNEC Exparte Geoffrey Gathenji**. However, the exparte applicants have only selected a portion of the decision on the scope of Judicial Review remedies and pasted it in their written submissions, while highlighting favourable portions thereof and leaving out the entire substance of that decision that is relevant to the entire case herein.

57. This court acknowledges that Judicial Review remedies have now a wider scope in view of the provisions of Articles 23 and 47 of the Constitution and the Fair Administrative Action No. 4 of 2015 at Section 4 thereof which later sets out what remedies the court exercising Judicial Review jurisdiction can grant.

58. However, for this court to grant any of those Judicial Review orders as expanded by the Constitution and as implemented by the enactment of the Fair Administrative Action Act No. 4 of 2015, a party must specifically seek for those orders.

59. The court cannot grant Judicial Review Orders which are not sought, even in the upholding and enforcing the Bill of Rights as stipulated in Articles 22 and 23 of the Constitution.

60. Some of the functions of the County Governments relate to enforcement of the Bill of Rights such as the duty to ensure that every person has a right to a clean and healthy environment which includes the right:

- a. To have the environment protected for the benefit of present and future generations through

legislative and other measures particularly those contemplated in Article 69 (obligations in respect of the environment);

b. To have obligations relating to the environment under Article 70 of the Constitution.

61. Article 43 of the Constitution also stipulates that Every person has the right:

a. To the highest attainable standard of health, which includes the right to health care services, including reproductive health care;

b. To accessible and adequate housing and to reasonable standards of sanitation.

62. I have carefully examined the applicant's notice of motion, from the citation to the statutory statement and supporting and further affidavits. I have not seen any citation of breach of any of the constitutional provisions that I have set out in this judgment.

63. Breach of a constitutional mandate must be specifically set out and not generally pleaded or submitted upon. In addition, failure to perform a specific statutory duty which is a public duty must also be clearly spelt out in the grounds and not generally pleaded the way the ex parte applicant has pleaded, and only mentioned provisions of the Constitution and the County Government Act in their submissions.

64. In such circumstances, the court is not obliged to grant Judicial Review orders which are discretionary and which must be, in the case of mandamus, directed at the act of compelling performance of a specific public duty which the respondents herein are alleged to have failed to perform.

65. In my humble view, it is not sufficient for the applicants to claim that because they were paying for licences then the respondents were under a duty to perform those named acts.

66. The performance of those acts must and should have been linked to specific statutory duties because judicial review orders are not issued generally but are directed at a specific pleaded action pursuant to a specific duty imposed by statute.

67. Furthermore, as correctly submitted by Mr Ranja counsel for the respondents, the issue of licencing of traders is a constitutional mandate/function of the respondents and this court cannot be called upon to issue a restraining order to injunct the respondents from performing a constitutional and statutory function. The court can only prohibit the performance of an illegal act. It is not demonstrated here that the act of collecting licence fees from the applicant is an illegal Act.

68. The licence fees are stipulated or prescribed in the County Finance Act which is enacted through public participation. That Act is not before this court for consideration with a view to declaring it unconstitutional as no prayers have been sought challenging its constitutionality.

69. Equally, it is not alleged that the respondents are acting illegally by receiving licence fees. This court would therefore be acting ultra vires if it attempted to restrain the respondents from collecting trade licence fees which is prescribed by County Assembly legislation, where that legislation is not under any legal challenge before the court.

70. Charging specific licence fees is not a discretionary power of the respondents. It is a statutory duty and unless it is shown that the respondents are acting illegally, irregularly and irrationally or with impropriety, this court would not interfere with the statutory functioning of the respondents.

71. Furthermore, the applicant sought for injunctive relief and not prohibition which are two different judicial review orders/remedies under Section 4 of the Fair Administrative Action Act No. 4 of 2015.

72. In the absence of any prayer for prohibition orders and without laying a legal foundation for it,

this court cannot grant orders which are not sought in the notice of motion.

73. With regard to restraining orders from further demanding the licence fees from the applicants until the actions in prayer 1 are taken, this court finds that as the levying of licence fees is a statutory and constitutional mandate, the court cannot injunct the performance of that which the law commands should be performed by a public body or authority or person.

74. As to whether the order of mandamus sought is available to the exparte applicants, and based on the **Republic vs KNEC exparte Geoffrey Gathenji** (supra) case, this court notes that what the exparte applicant seeks to be performed are functions of the County Government vested by the Constitution and the County Government Act. That being the case, this court cannot compel the County Government to perform its functions or duties in a particular way, as the County Governments plan and execute their functions and duties in the manner that they determine, based on many factors including financial and each of the functions have financial implications. If this court were to grant mandamus, regrettably, it would not enforce the implementations thereof.

75. And since some if not most of the functions enumerated also form part of the constitutional rights under the Bill of rights, such as the right to clean and healthy environment as well as the social economic rights, the exparte applicants have an alternative remedy of approaching the court by way of constitutional petition for enforcement of those constitutional rights.

76. Mandamus will in the circumstances of this case not be an effective remedy and therefore granting it will be making or issuing orders in vain.

77. On the other hand, the court was informed that the respondent installed lighting at the shopping centre which the exparte applicants consider to be dim as it does not adequately illuminate the area. That being the case, the order of mandamus is being sought to compel the installation of lights of particular brightness which is not within the purview of this court.

78. Equally, this court would not compel the improvement of drainage system as that is too generalized a function which is not quantifiable and too subjective.

79. In addition, this court cannot compel issuance of affordable licences as the licence fee is prescribed in the respective County Finance Acts, which legislation is not being challenged before this court.

80. The same position applies to the demand for the general maintainance of infrastructure and facilities of public service. To issue mandamus to compel performance of such generalized functions is to make orders in vain.

81. There was no evidence that the respondents are, generally speaking, not performing any of their functions as enumerated which functions are not only statutory but also constitutional.

82. In my humble view, the court has no power to grant mandamus to compel the respondents to perform an executive discretion just as the legislature or executive cannot interfere with judicial discretion. And it would be an express violation of the Constitution which declares upon its face the establishment of three separate interdependent arms of Government if this court was to grant mandamus in such circumstances thereby exercising power that belongs to the county executives.

83. In other words, the exercise of such power would be a unwarrantable interference with the action of the executive within its appropriate sphere of duty.

84. I hasten to add that where the County Government fails in its mandate to render services to its inhabitants, the applicants have the power to petition for impeachment of the Governor for misdemeanor in office and not to seek mandamus for performance of constitutional functions or exercise of statutory duties in a particular specific couched manner.

85. This is not to say that the court cannot compel performance of statutory duties by the respondent but that it can only compel the performance of statutory duties where there is no discretion in the performance of such duties.

86. In making such finding this court is alive to the fact that many Kenyans had very high expectations of the devolved system of governance in terms of service delivery and therefore when that system appears not to be delivering to their expectations, the people get disillusioned and start oscillating from ecstasy to apathy and their only hope is in the courts which they believe can compel performance of those constitutional and statutory duties.

87. However, the County Governments have a social contract with the people they serve and therefore through public participation and with proper budgeting, the County Governments in consultation with the residents prioritize the services that are needed by the citizens.

88. The Chief Executive of the County Government is the Governor, who is the Chief Administrator of the County through his officers and various departments and the Governor's liability to impeachment and removal from office is declared in the Constitution under Article 186 and it is obvious that the framers of the Constitution intended that, that alone to be the remedy for violation of duty by the Chief Executive.

89. I am Fortified by the many decisions of this court among others, **Joccinta Wanjiru Raphael V William Nangulu & Others [2014] e KLR** that:

“.....it must always be remembered that Judicial Review orders being discretionary are not guaranteed and hence a court may refuse to grant them even where the requisite grounds exist since the court has to weigh one thing against another and see whether or not the remedy is the most efficacious in the circumstances obtaining and since the discretion of the court is a judicial one, it must be exercised on the evidence of sound legal principles. The court does not issue orders in vain even where it has jurisdiction to issue the prayed orders. Since the court exercises a discretionary jurisdiction in granting Judicial Review orders, it can withhold the gravity of the order where among other reasons, it there has been delay and where a public body has done all that it can be expected to do to fulfill its duty or where the remedy is not necessary or where its path is strewn with blockage or where it would cause administrative chaos and public inconvenience or where the object for which the application is made has already been realized, even if merited. The court would refuse to grant Judicial Review remedy when it is no longer necessary; or has been overtaken by events; or where issues have become academic exercise; or serves no useful or practical significance.”

90. And in **Republic vs Director General of East African Railways Corporation exparte Kaggwa [1997] KLR 194** Chesoni J captured it well when he said:

“ Mandamus is neither a writ of course neither a writ of right but a discretionary remedy which the court will grant only if there is no more appropriate remedy. In other words, if there is a satisfactory alternative remedy available to the applicant the court will not grant mandamus. Adequate alternative remedy is an important limitation to the availability of an order of mandamus. The purpose of mandamus is to compel the performance of a public duty or as act contrary to, or evasive of, the law; and it does not lie against a public officer as a matter of course and where one or more, of the bars or limitation exists, the court will, usually not exercise its discretion in favour of the applicant. These bars are: that there is an alternative specific remedy at law; that there is no possibility of effective enforcement, or performance will be impossible by reason of the circumstances, like lack of power or means to obey on the part of the respondent; and that it will result in interference by the judicial department with the executive arm of government. All in all these bars are discretionary; but there has to be a good reason for them not to apply to a particular case where they exist.”(Emphasis added).

91. I can't agree more with the above decisions as highlighted.

92. In the end, and for all the above reasons, the only order that commends itself in the circumstances of this case is that I decline to grant the Judicial Review orders sought in the notice of motion dated 18th April 2016 and for want of merit, I dismiss it with no orders as to costs.

Dated, signed and delivered at Nairobi this 6th day of December 2016.

R.E. ABURILI

JUDGE

In the presence of:

Mr Ranja for the respondents

N/A for applicant(Harriet pupil attending for Kibugi

CA: Lorna