



**Waqo v Governor, Nairobi City County & 3 others (Petition E117 of 2025)  
[2025] KEELRC 2944 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2944 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E117 OF 2025  
B ONGAYA, J  
OCTOBER 30, 2025**

**BETWEEN**

**HALKANO DIDA WAQO ..... PETITIONER**

**AND**

**GOVERNOR, NAIROBI CITY COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**NAIROBI CITY COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**NAIROBI CITY COUNTY ASSEMBLY ..... 3<sup>RD</sup> RESPONDENT**

**SPEAKER NAIROBI CITY COUNTY ASSEMBLY ..... 4<sup>TH</sup> RESPONDENT**

*(Before Hon. Justice Byram Ongaya on Thursday 30th October, 2025)*

**JUDGMENT**

1. The petitioner filed the petition dated 11.06.2025 through Bashir and Associates Advocates. The petitioner prayed for the following reliefs:
  - a. A declaration that the failure by the respondents to communicate with the petitioner on the status of his nomination violated his rights under Articles 35 and 47 of *akn ke act 2010 constitution the Constitution*.
  - b. An order of certiorari quashing any appointment or reassignment of any other person to the position of County Chief Officer Housing and Urban Renewal without due compliance with section 45 of the *akn ke act 2012 17 County Governments Act*.
  - c. An order of mandamus compelling the 3<sup>rd</sup> and 4<sup>th</sup> respondents to submit the report of the Lands, Planning and Housing Committee of the County Assembly for consideration by the 3<sup>rd</sup> respondent with a period of 14 days.



- d. General damages for violation of the petitioner’s rights under Articles 35 and 47 of *akn ke act 2010 constitution the Constitution*.
  - e. Costs of the petition.
  - f. Any other relief that the Honourable Court may deem just and appropriate.
2. petitioner’s supporting affidavit as follows:
- a. The petitioner applied and was shortlisted for the position of County Chief Officer. He was nominated on 15.04.2024 alongside other candidates for the position of Chief Officer. The nominations for the various Chief Officer positions were as follows:
    - i. David Sande Oyolo Alukhome – Digital Economy and Start-ups.
    - ii. Halako Dida Waqo – Housing and Urban Renewal (the Petitioner).
    - iii. Amina Mohamed – Wellness, Nutrition and School Feeding.
    - iv. Machel Waikenda – Economic Affairs.
    - v. Gladwell Cheruiyor – Food, Agriculture and Natural Resources.
    - vi. Bernard Muia – Boroughs and Sub-County Administration.
    - vii. Jane Wangui – Markets and Trade.
  - b. Per section 45(1) of the *akn ke act 2012 17 County Governments Act* as read with sections 5, 6, and 7 of the *akn ke act 2017 5 Public Appointments (County Assemblies Approval) Act* No.5 of 2017, the petitioner’s name and the other six (6) nominated candidates was published in a public notice in the Daily Nation Newspaper of 23.04.2024. The public was invited to submit memoranda on the proposed nomination to the specific position of Chief Officer, Housing and Urban Renewal.
  - c. On 06.05.2024 the Lands, Planning and Housing Committee of the County Assembly of Nairobi City vetted the petitioner to assess his suitability for the position as nominated. On 20.05.2024 per standing order No. 32 (3) of the County Assembly’s Standing Orders, the 4<sup>th</sup> respondent by gazettee notice Vol. No. CXXVI No.6 gazetted a special sitting of the County Assembly to consider the reports of the Assembly’s Sectoral Committees on vetting of the seven (7) nominees for approval of appointment to the various positions of Chief Officer.
  - d. The petitioner expected his approval to proceed smoothly and he did not pursue any other professional or economic opportunities.
  - e. On 21.05.2024 the special sitting of the County Assembly considered reports for six (6) nominees but did not consider the report with respect to the petitioner’s nomination because the relevant County Assembly Sectoral Committee report by the Lands, Planning and Housing Committee of the Assembly which had vetted the petitioner. It is the petitioner’s case that the committee’s failure to table the report inexplicably excluded him within the context of standing order No. 32(4) of the Standing Orders of the County Assembly of Nairobi City.
  - f. After the vetting proceedings, the petitioner has never been notified of the outcome of the vetting process and in violation of Articles 35 and 47 of *akn ke act 2010 constitution the Constitution* of Kenya, 2010, and, section 7 of the *akn ke act 2017 5 Public Appointments (County Assemblies Approval) Act*, 2017. Section 9(1) of the Act states, “(1)Unless otherwise



provided in any law, a committee shall consider a nomination and table its report in the County Assembly for debate and decision within twenty-one sitting days from the date on which the committee first sits to consider the nomination.”

- g. On 01.10.2024 the Honourable County Assembly Member for Ngei Ward sought a statement on the floor of the house about the status of the report on the vetting of the petitioner to be made by the Chairperson of the Lands, Planning and Housing Committee of the Assembly. The 4<sup>th</sup> respondent communicated that the delay of considering the petitioner’s suitability as nominated had been occasioned by the failure to table the report before the House by the Chairperson of the Lands, Planning and Housing Committee of the Assembly. The 4<sup>th</sup> respondent further stated thus, “...In this regard, I have counted the 21 sitting days cut-off as set out by section 9 of the Public Appointments (County Assembly Approval) Act, 2017 and the time line for tabling the said report expires on 7<sup>th</sup> August 2024. Consequently, I call upon the Chairperson and the Membership of the Committee to be cognizant of this date as they process the said report.”
  - h. On 19.09.2024 the petitioner wrote to the 3<sup>rd</sup> and 4<sup>th</sup> respondents in a bid to follow up and establish the status of the outcome following his vetting as nominated for Chief Officer Housing and Urban Renewal. He has so far received no response. The petitioner has made numerous formal and informal inquiries on whether his nomination was approved or rejected for appointment but no useful response has been provided to him.
  - i. The petitioner’s case is that by shortlisting, gazetting, nominating, and vetting him for the position a legitimate and reasonable expectation was thereby established that he would be appointed to the position of County Chief Officer for Housing and Urban Renewal or notified of any contrary decision by the County Assembly of Nairobi City. The respondents were automatically required to address the petitioner’s reasonable expectation and the failure to do so was unlawful, unreasonable, procedurally unfair and in breach of the legitimate expectation to due process in the vetting and appointment proceedings.
  - j. The petitioner has thereby suffered significant harm including emotional distress and mental anguish due to the administrative opacity and disregard, and, suffered reputational harm from public perception of being nominated and silently dropped without an explanation.
  - k. As a professional he has experienced loss of income and missed economic opportunities caused by reliance on the anticipated appointment as well as diminished professional standing and confidence in the integrity of public recruitment process. The suffering was aggravated by the refusal to provide relevant information in violation of the constitutional values of transparency, accountability, and good governance.
  - l. The petitioner’s case is that Articles 47 on the right to fair administrative decision and Article 35 on the right to access to information have been violated.
3. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed grounds of opposition dated 28.07.2025 through Ogejo, Omboto & Kijala Advocates LLP urging the dismissal of the petition with costs upon the following grounds:
- a. That the petition is wanting in form and substance and does not meet the threshold set out in the locus classicus of Anarita Karimi Njeri, as the petitioner has veered off the confines of what to: i) plead and tender evidence in support of the manner in which the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have infringed on his constitutional right; and, ii) link the alleged violations to any Constitutional provision.



- b. That the petition does not meet the evidentiary threshold of granting the orders sought as the facts and or grounds upon which the petition is anchored and premised do not raise any constitutional infringement or violation to warrant granting the orders as prayed for in the petition but are the spurious assembly of allegations choreographed by the petitioner to suit their narrative for the grant of the orders.
  - c. That the petition as presented is a wanton abuse of the court process, scandalous, frivolous, and fundamentally incurable and fatally bad in law, an abuse of the court process, misconceived defective vexatious and intended to embarrass the Court and the legal process.
  - d. That the petition and the affidavit in support is otherwise incompetent, misconceived, and fatally defective.
4. The 1<sup>st</sup> and 2<sup>nd</sup> respondents also filed the replying affidavit of Godfrey Akumali, the acting County Secretary of the 2nd Respondent sworn on 30.07.2025 and stated as follows:
- a. That the 1<sup>st</sup> respondent the Governor of the Nairobi City County, is the Chief Executive Officer of the County Government as provided under Article 179 of *akn ke act 2010 constitution the Constitution* and Section 30 of the *akn ke act 2012 17 County Governments Act*.
  - b. That the 2nd Respondent is a devolved government established under the Article 176 (1) of *akn ke act 2010 constitution the Constitution* of Kenya, 2010.
  - c. That he was advised by the Counsel on record for the 1<sup>st</sup> and 2<sup>nd</sup> respondents which advice he verily believe to be sound that the procedure for appointment of Chief Officers in the County is provided for in the Public Appointments (County Assembly Approvals) Act No. 5 2017 and the *akn ke act 2012 17 County Governments Act* 2012. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents invoke the doctrines of *ei qui «firmat, non ei qui negat*, and *incumbit probation and actori incumbit onus probandi* (hereinafter referred to as "the doctrines").
  - d. That he was advised by the Counsel on record for the 1<sup>st</sup> and 2<sup>nd</sup> respondents which advice he verily believed to be sound that section 4 of the Public Appointments (County Assembly Approvals) Act No. 5 2017 provides that an appointment under *akn ke act 2010 constitution the Constitution* or any other law for which the approval of a County Assembly is required shall not be made unless the appointment is approved by the relevant County Assembly in accordance with the Act. The doctrines are invoked to any averment to the contrary. Section 6 of the Act further provides that an appointing authority shall, upon nominating a person for an appointment to which the Act applies, notify the relevant County Assembly accordingly. The doctrines are as well invoked to any averment to the contrary.
  - e. On the 15<sup>th</sup> April 2024, the 1<sup>st</sup> respondent nominated seven (7) candidates for the positions of Chief Officer of various sectors and the said names were forwarded to the 4<sup>th</sup> respondent to be vetted and approved by the 3<sup>rd</sup> respondent. The process of vetting and approval is the mandate of the 3<sup>rd</sup> respondent and the 1<sup>st</sup> and 2<sup>nd</sup> respondents have no control over what happens therein. The 1<sup>st</sup> and 2<sup>nd</sup> respondents adhered to the process and procedure as outlined in the Act.
  - f. That currently there is no vacancy for the position of Chief Officer, Housing and Urban Renewal within the 2<sup>nd</sup> respondent's sectors.
  - g. The allegations imposed on the 1<sup>st</sup> and 2<sup>nd</sup> respondents are far-fetched, misconstrued, unlawful and unreasonable. The petition is therefore misconceived and be dismissed with costs.



5. The 3<sup>rd</sup> and 4<sup>th</sup> respondents filed the replying affidavit of Edward O. Gichana, the clerk of the 3<sup>rd</sup> respondent, sworn on 23.06.2023 through the Clerk's Office and stated as follows:
  - a. The 3<sup>rd</sup> and 4<sup>th</sup> respondents are not responsible for nomination of a Chief Officer. Their role is to approve or reject such nomination in accordance with applicable law.
  - b. It is true that on 15.04.2024 the 1<sup>st</sup> respondent nominated the 7 candidates for the various positions of Chief Officer as pleaded for the petitioner. The nomination of the petitioner was committed to the Committee on Lands, Housing and Urban Planning per section 7 of the Public Appointments (County Assembly Approvals) Act No. 5 2017. The Committee vetted the petitioner on 06.05.2024. Per section 9 of the Act, the Committee is required to consider the nomination and table its report to the House for debate and decision within 21 sitting days from the date on which the Committee first sits.
  - c. On 21.05.2024 at a special sitting of the County Assembly the House considered and approved six (6) reports on suitability of the nominated candidates for Chief Officer for various sectors.
  - d. Per section 45 (5) of the *akn ke act 2012 17 County Governments Act* the 1<sup>st</sup> respondent reshuffled the County Chief Officers and one Lydia Mathia was deployed as Chief Officer for Housing and Urban Renewal.
  - e. The report of the County Assembly Committee on Lands, Housing and Urban Planning on vetting of the petitioner for the position of Chief Officer Housing and Urban Renewal is therefore spent or overtaken by events. An order that the Committee is compelled to submit the report is futile.
  - f. The petitioner is entitled to notification of approval or rejection of his nomination for appointment where the Committee's report on his vetting has been tabled and deliberated by the House for appropriate decision. In the instant case no such entitlement exists because no Committee report was tabled, deliberated and a decision made one way or the other.
  - g. The alleged failure by the claimant to pursue other professional and economic opportunities was unfounded as no such legitimate expectation accrued and he was presumptuous, misconceived and misinformed because the vetting process by the County Assembly did not guarantee an approval but could as well revert with a rejection of the nomination for appointment.
  - h. The allegations that the conduct of the 3<sup>rd</sup> and 4<sup>th</sup> respondents was unlawful, unreasonable, and procedurally unfair and in breach of legitimate expectation are false, mischievous and unsubstantiated.
  - i. Due process and procedure was meticulously adhered to and all the candidates for Chief Officer were accorded a fair and competitive process. The petition is misplaced, lacks merit, and is an abuse of Court process as should be dismissed with costs.
6. Final submissions were filed for the parties. The Court has considered the material on record and the parties' respective cases. The Court returns as follows.
7. To answer the 1<sup>st</sup> issue, the Court returns that the 1<sup>st</sup> and 2<sup>nd</sup> respondents are proper parties and the petitioner has passed the test in pleading his case. It is submitted for the 1<sup>st</sup> and 2<sup>nd</sup> respondent that they have simply performed their respective statutory duty which was to nominate the petitioner for position of Chief Officer and they had no role in the vetting by the County Assembly for the rejection or approval of the nomination. That their role to nominate had been performed and dusted



as exhausted conclusively. Up to that point the 1<sup>st</sup> and 2<sup>nd</sup> respondent's case and submissions would be upheld. However, the petitioner has another claim, that no other person be appointed or assigned the position of Chief Officer Housing and Urban Renewal in issue herein unless his rights in Articles 35 and 47 of *akn ke act 2010 constitution the Constitution* and the values and principles of governance in Article 10 are vindicated, having been violated as alleged herein. The Court finds that to the extent of the alleged violations and in view of the relief that the 1<sup>st</sup> and 2<sup>nd</sup> respondents should not make the appointment or assignment to the office of Chief Officer Housing and Urban Renewal as alleged and prayed for, the 1<sup>st</sup> and 2<sup>nd</sup> respondents are proper parties and an elaborate case has been pleaded against them. The Court finds that they are not only necessary parties for effectual, efficient and complete determination of the dispute but are as well proper parties against whom a specific relief has been made, namely certiorari to quash an appointment or assignment to the office as prayed for and general damages for violation of rights in Articles 35 and 47 of *akn ke act 2010 constitution the constitution*. It could be that the claims, allegations and reliefs may have been worded more precisely with respect to each respondent but undoubtedly, the petition as drawn establishes an alleged cause of action and reliefs in the realm of constitutional violations as found by the Court.

8. To answer the 2<sup>nd</sup> issue, the Court returns that the petitioner has by affidavit evidence on record established that he was nominated as Chief Officer Housing and Urban Renewal, he was invited for the vetting, the vetting report was not tabled by the relevant sector committee of the County Assembly Committee on Lands, Housing and Urban Planning, he asked for the information on the status of the report but it was not provided to date. He has as well not been provided reasons for the 3<sup>rd</sup> and 4<sup>th</sup> respondents' refusal to provide the status information about his vetting. The Court finds that the 3<sup>rd</sup> and 4<sup>th</sup> respondents have indeed violated the petitioner's rights in Article 47 and 35 as well as the values in Article 10 of *akn ke act 2010 constitution the Constitution* when they appear to have aborted the vetting process through the sector committee's failure to table the report for deliberation within the stipulated statutory timelines or failing to prepare a report at all. The material before the Court does not establish, upon a balance of probability, that the Committee indeed prepared a vetting report that could be tabled before the house within the stipulated time for purposes of rejecting or approving the petitioners' nomination for appointment as the Chief Officer Housing and Urban Renewal. While making that finding, the Court considers that the 3<sup>rd</sup> and 4<sup>th</sup> respondents' statutory duty ranged from inviting the petitioner for vetting process, undertaking the vetting, preparing the vetting report, tabling the vetting report before the full House of the County Assembly for deliberation, and making and communicating the decision whether the petitioner's nomination had been rejected or approved for appointment. To that extent, the Court returns that the petitioner has established violations only to that extent and not to the extent of the petitioner's remote claim that the 3<sup>rd</sup> and 4<sup>th</sup> respondents had breached his reasonable and legitimate expectation to be employed as nominated and thereby had suspended taking up of other professional or economic opportunities. In any event, as submitted for the respondents, there is no established basis for the petitioners' allegation that in view of the violations, he had automatically lost an employment opportunity or that he was entitled to suspend his otherwise prevailing professional or economic opportunities.
9. To answer the 3<sup>rd</sup> issue, the Court has already found that the petitioner's rights in Articles 35 and 47 as well as the values and principles of national governance including transparency, accountability and good governance were violated. The petitioner has shown that he demanded for the status of his vetting but no response was given. His right to access information held by the state and by another person if it is needed to exercise or protect a right or fundamental freedom, and, requiring the state to publish and publicize important information was violated. It is undisputed that by statute the Committee was required to table the report to the full House and thereafter the deliberations on rejecting or approving the petitioner's to issue. To date, the 3<sup>rd</sup> and 4<sup>th</sup> respondent have failed to publish



and publicize that important information as obligated by *akn ke act 2010 constitution the Constitution* and statute. The petitioner has as well established that the 3<sup>rd</sup> and 4<sup>th</sup> respondents violated his right to fair administrative action under Article 47 granting the petitioner the right to fair administrative action that was expeditious, efficient, lawful, reasonable and procedurally fair. His right to the opportunity to get fairly employed or not employed as a Chief Officer through rejection or approval of his nomination appears to have been grossly violated when the vetting proceedings before the Committee appear not to have been reported and deliberated by the 3<sup>rd</sup> respondent as was required by statute. The Court finds that it was most callous and whimsical for the 3<sup>rd</sup> and 4<sup>th</sup> respondents to simply urge that the matter is overtaken in circumstances that they have for no good reason shown, abdicated their mandatory statutory and constitutional obligations to the public and more specifically to the petitioner as already found earlier in this judgment. It is found to amount to a gross constitutional and statutory violation for the 3<sup>rd</sup> and 4<sup>th</sup> respondents to have failed to undertake or ensure undertaking of the vetting of the petitioner, as was nominated, proceeded and concluded in strict compliance with the statutory provisions which set out clear timelines.

10. The 4<sup>th</sup> issue is whether the petitioner is entitled to the remedies as prayed for. The Court returns as follows:
  - a. The petitioner prayed for declaration that the failure by the respondents to communicate with the petitioner on the status of his nomination violated his rights under Articles 35 and 47 of *akn ke act 2010 constitution the Constitution*. As already found by the Court, the relief will issue as against the 3<sup>rd</sup> and 4<sup>th</sup> respondents.
  - b. The petitioner prayed for an order of certiorari quashing any appointment or reassignment of any other person to the position of County Chief Officer Housing and Urban Renewal without due compliance with section 45 of the *akn ke act 2012 17 County Governments Act*. It is true that on 05.08.2024 the 1<sup>st</sup> respondent communicated the reassignment of Chief Officers per section 45(5) of the *akn ke act 2012 17 County Governments Act* and Lydia Mathia was reassigned from Public Participation, Citizen Engagement and Customer Service to, Housing and Urban Renewal. There is no material before the Court to show that the reassignment was illegal or in breach of applicable statutory provisions. Accordingly the relief will not issue as no ground for grant of an order of certiorari has been established in that respect.
  - c. The petitioner prayed for an order of mandamus compelling the 3<sup>rd</sup> and 4<sup>th</sup> respondents to submit the report of the Lands, Planning and Housing Committee of the County Assembly for consideration by the 3<sup>rd</sup> respondent within a period of 14 days. It is undoubted that the prescribed time for tabling the report before the full House of the County Assembly has since lapsed. There is also nothing on record to show that the report on the vetting of the petitioner as had been nominated was actually prepared and that it actually exists. In the circumstances the Court has found that the 3<sup>rd</sup> and 4<sup>th</sup> respondents completely abdicated their respective statutory duty in that respect. Lack of material to show that the report actually exists and the time within which the County Assembly should have received and deliberated the report having lapsed will, in the Court's findings, operate as a bar to grant of the judicial review order of mandamus. As submitted for the 3<sup>rd</sup> and 4<sup>th</sup> respondents, Mativo J (as he then was and currently JA) in *Republic v Anti-Counterfeit Agency Exparte Caroline Mangala t a Hair Works Saloon* [2019] KEHC 12010 (KLR) held thus, "96. Mandamus is a discretionary remedy, which a court may refuse to grant even when the requisite grounds for it exist. The court has to weigh one thing against another to see whether or not the remedy is the most efficacious in the circumstances obtaining. The discretion of the court being a judicial one must be exercised on the basis of evidence and sound legal principles. I am not persuaded that the



applicant has demonstrated sound grounds for the court to exercise its discretion in his favour and grant the Judicial Review order of Mandamus.” In view of the established bars to grant mandamus, the Court considers that order will not issue.

- d. In *Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* [1997] KECA 58 (KLR) the Court of Appeal (Omolo, Tunoi and Shah, JJ.A) it was held thus, “The next issue we must deal with is this: What is the scope and efficacy of an ORDER OF MANDAMUS? Once again we turn to HALSBURY’S LAW OF ENGLAND, 4th Edition Volume 1 at page 111 FROM PARAGRAPH 89. That learned treatise says:- “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 and 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.”

At paragraph 90 headed “the mandate” it is stated: “The order must command no more than the party against whom the application is made 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.”

What do these principles mean? They mean that an order of mandamus will 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.” In the instant case, the statute set the timelines within which the Committee vetting the petitioner had to complete the report and the timelines within which the County Assembly was required to deliberate the report as a full House and reject or approve the petitioner for the appointment. The order of mandamus appears to invite the Court to set a new timeline in circumstances that the statutory timelines have long ago lapsed. It appears to the Court that the statutory duty for the County assembly to receive, deliberate and decide upon the report by the Committee that vetted the petitioner by rejecting or approving the appointment has since lapsed and the Court cannot set timelines outside those set and envisaged in the statute . If the Court were to grant mandamus as prayed for, then the Court would be commanding the 3<sup>rd</sup> and the 4<sup>th</sup> respondents to carry out a purported statutory duty that in fact has ceased to exist or in manner other than it was imposed by statute, essentially, rendering such order of mandamus to be outside of the legitimate and regular scope of a proper order of mandamus.

- e. In *Republic v Director General of East African Railways Corporation Ex-Parte George Nume Kaggwa* [1977] KEHC 8 (KLR) Chesoni J stated as follows,

“Mr. Shields drew our attention to the passage in Prem’s Law of Writs in India, England and America (2nd Edn), page 385 which was quoted with approval in *Shah v Attorney-General (No 3)* [1970] E A 543, 549, which says:



Mandamus does not lie against a public officer as a matter of course. The Courts are reluctant to direct a writ of mandamus against executive officers of a Government unless some specific act or thing which the law requires to be done has been omitted. Courts proceed with extreme caution for the granting of the writ which would result in interference by the judicial department with the management of the executive department of the Government.

With respect I agree with the passage, although it must be remembered that the Court as a custodian of the rights of those under its jurisdiction must ensure that justice is done to those who come before it regardless of whether or not that interferes with the management of the executive arm of Government. That is why, where there is no other remedy open to the applicant, the Court has no choice but to grant the order of mandamus (fiat justitia) so that justice may be done and be seen to be done (see *R v Bishop of Sarum* [1916] 1 K B 466). The purpose of mandamus is to compel the performance of a public duty or an act contrary to, or evasive of, the law; as I said above, it does not lie against a public officer as a matter of course and where one or more of the bars or limitations which I have considered above exist 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 management of the executive arm of Government. There are other bars, which are not relevant to this case, like delay in making the application. 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. The first three limitations exist in the present case....”

- f. In the instant case, the Court has established a bar to grant of an order of mandamus, namely that the report to be deliberated to reject or approve the petitioner’s nomination for appointment has not been shown to exist at all. Further and more important, the 3<sup>rd</sup> and the 4<sup>th</sup> respondents appear not to have the power to consider the report if at all it existed and on account that the statutory timelines within which the report must be deliberated by the House have since lapsed. Further, the evidence is that the office of Chief Officer Housing and Urban Renewal is no longer vacant. The Court returns that in the circumstances, the judicial review order of mandamus will not issue.
- g. The petitioner prayed for general damages for violation of the petitioner’s rights under Articles 35 and 47 of *akn ke act 2010 constitution the Constitution*. It has also been found that the 3<sup>rd</sup> and 4<sup>th</sup> respondents violated some of the principles and values of governance in Article 10 of *akn ke act 2010 constitution the Constitution*. While the petitioner has established that his rights were violated by the 3<sup>rd</sup> and 4<sup>th</sup> respondents as found herein, no submissions were made for the petitioner to guide the Court on the quantum of the award. The respondents have as well not made any submissions in that respect except by stating that the reliefs prayed for not be allowed.
- h. The Court has considered and been guided, as is bound, by the Court of Appeal holding in *Commission on Administrative Justice –Versus- Kenya Vision 2030 Delivery Board & 2 others* [2019]eKLR (Nambuye, Kiage & Murgor JJ.A) thus, “As for an order for compensation and assessment of the attendant quantum of damages, having ruled above in favour of the 3<sup>rd</sup> respondent in his claim that his right to a Fair Administrative Action was infringed by the



1<sup>st</sup> respondent, we issue a declaration that the 3<sup>rd</sup> respondent's right to a Fair Administrative Action was violated by the 1<sup>st</sup> respondent. Consequent to the above finding, we now proceed to redress the same. The approach we take is as was stated by the High Court in *Ericson Kenya Limited versus Attorney General & 3 others* [2014] eKLR for the holding inter alia that: "a court of law has a duty after finding in favour of a party under Article 23 of the Kenya Constitution 2010 to frame appropriate reliefs to vindicate the rights that may have been infringed and which reliefs are not limited to the specific (reliefs) outlined in Article 23(3) (a) to (e)" In *Gitobu Imanyara & 2 others –versus- Attorney General* [2016] eKLR we observe that the primary purpose of a constitutional remedy is not compensatory or punitive, but it is for purposes of vindicating the rights violated and to prevent or to deter any future infringement. See also *Lucas Omoto Wamari & 2 others* [2017] eKLR for observations inter alia that: "... mere declaration without any specific award of damages do not vindicate the appellant. Neither do they convey a derogative message regarding the sanctity of *akn ke act 2010 constitution the constitution* and the need for protection of fundamental rights and freedoms...."

- i. Again, In *Kenya Agricultural Research Institute –versus- Peter Wambugu Kariuki & others Nakuru Civil Appeal No. 315 of 2015*, the following observations were made by the Court of Appeal: "Our construction of Article 23 of *akn ke act 2010 constitution the Constitution* of Kenya, 2010 is that, it simply makes provisions that where a violation of the guaranteed constitutional rights and fundamental freedom has been established, the court has a wide range of remedies to grant. Among these is payment of monetary compensation. In the instant appeal as already mentioned above, the Judge simply made a pronouncement that the cross-appellant's rights and fundamental freedom had been violated but made no provisions for an appropriate remedy in line with that finding." We find nothing in the said Article to suggest that a particular relief for the alleged violation must be prayed for before it may be granted. We therefore find that there was jurisdiction for the Judge to grant the reliefs notwithstanding, lack of specific prayer for the particular appropriate remedy. In light of the above, it is our finding that the 3<sup>rd</sup> respondent is entitled to an award of damages which we now proceed to assess. The comparables for an appropriate award of damages for the established breach are as were set out in *Lucas Omoto Wamari –versus- Attorney General & Another* (supra) wherein, the Court reviewed the awards granted in *Jennifer Muthoni Njoroge and others –versus- the Attorney General* [2012] eKLR, and *Benedict Munene Kariuki & 13 others –versus- the Attorney General*; High Court Petition No. 722 of 2009, wherein, claimants were variously awarded amounts of between Kshs. 1.5. Million and Kshs. 2 million for torture, cruel and inhuman treatment and unlawful detention for periods ranging between seven (7) days to fourteen (14) days."
- j. In the instant case the 3<sup>rd</sup> and 4<sup>th</sup> respondents have taken a casual attitude that despite the violation of the petitioner's rights as found, and values and principles in Article 10 of *akn ke act 2010 constitution the Constitution*, the petitioner is not entitled to any remedies. Their Committee failed on the statutory duty imposed and the 3<sup>rd</sup> and 4<sup>th</sup> respondents failed, neglected or refused to ensure compliance with the relevant statutory provisions and the application of their own Standing Orders applicable in view that the Committee was not proceeding as expected. The Court has found a gross violation of the constitutional provisions. The claimant has invariably suffered a serious adverse outcome of an aborted process of his vetting and approval or rejection of his nomination to the office of Chief Officer Housing and Urban Renewal. To vindicate the violations the petitioner is awarded Kshs.7, 000, 000.00 payable jointly or severally by the 3<sup>rd</sup> and 4<sup>th</sup> respondents. In making the award the Court has considered that the liability is strict and absolute when the 3<sup>rd</sup> and 4<sup>th</sup> respondents breached the



statutory provisions which also amounted to infringement of the petitioner's rights and the Constitutional values and principles as already found earlier in this judgment. The award serves as both compensatory to vindicate the petitioner in view of the violation of his constitutionally protected rights as found and also to serve as a constant deterrent function against the 3<sup>rd</sup> and 4<sup>th</sup> respondents and other public and state bodies and organs for such public wrong. In making the award the Court has also considered the size and capacity of the 3<sup>rd</sup> and 4<sup>th</sup> respondents who caused the harm and their capacity to satisfy the award. The court is also alert that the award is distinct from a strict liability tort claim for breach of statutory provisions and for damages under private law. The award has been made under the Court's public law jurisdiction and irrespective of the claimant's private law claims. Thus, the Court considers that the petitioner correctly pursued his claims and reliefs by filing the instant constitutional petition. Again, the Court has found that the 3<sup>rd</sup> and 4<sup>th</sup> respondents grossly violated the mandatory statutory duty with timelines as was vested in them and offered no reasonable or lawful cause as they were not apologetic at all for such gross abdication of statutory duty that seriously undermined the constitutional rights, values and principles as found. In making the award the Court has considered that the 3<sup>rd</sup> and 4<sup>th</sup> respondents, in the circumstances, by inaction to discharge the statutory duty to vet, report, deliberate and reject or approve the petitioner's nomination as Chief Officer Housing and Urban Renewal amounted to serious abuse of power, dereliction of duty and a betrayal of public trust contrary to the irrevocable constitutional and statutory promise. The consequence was that the petitioner's fair right to the opportunity as nominated was extinguished irredeemably so and in total disregard of the applicable law and constitutional provisions. It is found to have been most unfair, unlawful and unconstitutional. Hence, the award.

- k. Thus in *Cooper v. Aaron*, 358 U.S. 1 (1958), the Supreme Court of US held that the Court could not countenance a claim by the Governor and Legislature of a State that there is no duty on state officials to obey federal court orders resting on the Supreme Court's considered interpretation of the United States Constitution in *Brown v. Board of Education*, 347 U. S. 483. P. 358 U. S. 4. In upholding the essence of a civilized democratic society guided by the rule of law and not men, the Supreme Court stated thus, "...For those in authority thus to defy the law of the land is profoundly subversive not only of our constitutional system but of the presuppositions of a democratic society...." And further,

"When defiance of law judicially pronounced was last sought to be justified before this Court, views were expressed which are now especially relevant:

"The historic phrase 'a government of laws and not of men...epitomizes the distinguishing character of our political society. When John Adams put that phrase into the Massachusetts Declaration of Rights he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. 'A government of laws and not of men' was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. Even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law. The Court may be asked to reconsider its decisions, and this has been done successfully again and again throughout our history. Or, what this Court has deemed its duty to decide may be changed by legislation, as it often has been, and, on occasion, by constitutional amendment.



"But from their own experience and their deep reading in history, the Founders knew that Law alone saves a society from being rent by internecine strife or ruled by mere brute power however disguised. 'Civilization involves subjection of force to reason, and the agency of this subjection is law.' (Pound, *The Future of Law* (1937) 47 *Yale L. J.* 1, 13.) The conception of a government by laws dominated the thoughts of those who founded this 'Nation and designed its Constitution, although they knew as well as the belittlers of the conception that laws have to be made, interpreted and enforced by men. To that end, they set apart a body of men, who were to be the depositories of law, who by their disciplined training and character and by withdrawal from the usual temptations of private interest may reasonably be expected to be 'as free, impartial, and independent as the lot of humanity will admit.' So strongly were the framers of *akn ke act 2010 constitution the Constitution* bent on securing a reign of law that they endowed the judicial office with extraordinary safeguards and prestige. No one, no matter how exalted his public office or how righteous his private motive, can be judge in his own case. That is what courts are for." *United States v. United Mine Workers*, 330 U. S. 258, 307-309 (concurring. opinion)."

- l. The Court returns that the 3<sup>rd</sup> and 4<sup>th</sup> respondents' abdication of performance of an accrued time bound statutory duty and which as well amounted to a violation of constitutional provisions as found in this judgment, was manifestly inconsistent with a government of laws and not of men, as envisaged in *akn ke act 2010 constitution the Constitution* of Kenya, 2010. In *Cooper v. Aaron*, 358 U.S. 1 (1958), the Supreme Court of US was handling a case of resistance to the pronouncements of the Court and which was rejected by the Court irrespective the justifications for the resistance. The Court considers that the Supreme Court's opinion as well applies to resistance to express constitutional and statutory provisions as was shown to be the case in the instant petition – and in which no justification for the constitutional violation and statutory breaches was suggested as to have existed. The Court finds that the 3<sup>rd</sup> and 4<sup>th</sup> respondents' strict liability as established in the instant petition constituted a conduct that was not reasonable and not justifiable in an open and democratic society based on human dignity, equality and freedom.
  - m. In that consideration, the Court finds that the award as made will meet the ends of justice. The reminder to the 3<sup>rd</sup> and 4<sup>th</sup> respondents is that per Article 73 of *akn ke act 2010 constitution the Constitution*, the authority granted in the offices they hold is a public trust that must be exercised in a way that is consistent with *akn ke act 2010 constitution the Constitution*, respects people, brings honour to the nation and dignity to the offices, and, promotes public confidence in the offices' integrity. Public office is about service to the people and not a power to rule the people free from the chains imposed by the law and *akn ke act 2010 constitution the Constitution*, especially, the pronouncements in the Bill of Rights.
  - n. The petitioner has substantially succeeded and he is awarded costs of the petition.
- In conclusion judgment is hereby entered for the petitioner jointly or severally against the 3<sup>rd</sup> and 4<sup>th</sup> respondents for orders as follows:
1. The declaration that the 3<sup>rd</sup> and 4<sup>th</sup> respondents violated the petitioner's rights in Articles 35 and 47 and values and principles of national governance in Article 10 of *akn ke act 2010 constitution the Constitution* as found herein.



2. The 3<sup>rd</sup> and 4<sup>th</sup> respondents to jointly or severally pay the petitioner Kshs. 7,000,000.00 by 15.01.2026 and failing interest to run thereon at Court rates from the date of this judgment until full payment.
3. The 3<sup>rd</sup> and 4<sup>th</sup> respondents to pay the petitioner's costs of the petition and all the respondents to bear their own costs, accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 30<sup>TH</sup> OCTOBER, 2025.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

