REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. E279 OF 2025

REPUBLIC……...….

APPLICANT

VERSUS

THE CABINET SECRETARY, THE MINISTRY OF NATIONAL TREASURY AND ECONOMIC PLANNING……..1ST RESPONDENT

THE MINISTRY OF NATIONAL TREASURY

AND ECONOMIC PLANNING……...2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL……...3RD RESPONDENT

AND

INSTITUTION OF SURVEYORS OF KENYA…EX PARTE APPLICANT

JUDGMENT

1. The application for determination by this Judgment is the Ex parte Applicant's Notice of Motion dated 2nd September 2025.The application is filed pursuant to leave of court granted on 4th September 2025in JR MISC Appl. No. E272 of 2025. The Notice of motion seeks a raft of orders framed as follows:

1. THAT this Application be certified as urgent and be heard ex parte in the first instance.

2. ***THAT this Honourable Court be pleased to grant the Applicant leave to apply for:***

2.1. An Order of certiorari quashing the public notice issued by the 1st Respondent dated 28th August 2025 for contravening all the relevant law and principles on Public Participation.

2.2. An order of mandamus compelling the Respondents to provide exact venues for the public participation on the draft Government Assets Valuation Policy framework for the Public Sector 2025.

2.3. A declaration that the 1st Respondent has violated Articles 10 and Article 232 of the Constitution of Kenya 2010 and all the relevant statutory provisions in the course of conducting purported public participation without providing exact venues of the public forums.

2.3.1.1. Articles 25(c) & 27(1) of the Constitution, right to equal protection and equal benefit of the law;

2.3.1.2. Article 35(1)(B) & (2) of the Constitution, Right to Access to Information

2.3.1.3. Article 41(1) & (2)(A) & (B) of the Constitution, Right to Fair Labour Practices

2.3.1.4. Article 47 of the Constitution, Right to Fair Administrative Action;

2.3.1.5. Article 50(1) & (2) of the Constitution, Right to Fair Hearing in Articles

2.3.1.6. Sections 4 & 6 of the Fair Administrative Action Act, No 4 of 2015

2.3.1.7. Sections 4, 7 & 13 of the Access to Information Act,2016

2.4. An Order of Prohibition restraining the 1st Respondent from adopting, issuing, and or publishing the draft or final Government Assets Valuation Policy framework for the Public Sector 2025.

2.5. An Order of Prohibition restraining the 1st Respondent from enforcing any adopted, issued, and or published draft or final Government Assets Valuation Policy framework for the Public Sector 2025.

2.6. An Order of certiorari quashing the resultant draft or final Government Assets Valuation Policy framework for the Public Sector 2025 that will have been issued, adopted and or published by the 1st and 2nd Respondent for contravening all the relevant law and principles on Public Participation.

2.7.An Order for damages following the 1st Respondent's contravention of the Constitution of Kenya 2010 and statutory provisions on public participation

3. THAT the granted leave to operate as stay of the Respondents' intended exercise for public participation that commenced on 1st September 2025 to 5th September 2025, and also the intended issuance, adoption and or publication of draft or final Government Assets Valuation Policy framework for the Public Sector 2025 as Government Policy.[emphasis material]

3. The application is supported by the statutory statement dated 2nd September 2025 and the verifying affidavit of Eric Nyadimo sworn on even date.

4. According to the Applicant, on 26th August 2025, the 1st Respondent published a Notice in the Daily Nation Newspaper calling for public participation on the draft Government Assets Valuation Policy framework for

the Public Sector 2025, pursuant to Articles 10 and 232 of the Constitution of Kenya 2010.

5. The Applicant asserts that the Notice by the 1st Respondent failed to comply with Constitutional and Statutory provisions on public participation as it did not provide for the exact venues for the public participation within the Counties.
6. That the public participation process commenced on 1st September 2025 and was to end on 5th September 2025, however, that the Respondents as at the time the instant notice of motion application was being filed were yet to provide for the exact venues for the public participation.
7. The Applicant states that despite numerous requests and calls to the 1st Respondent's office, the 1st respondent has failed to provide forums for the public participation. Further, that the Applicant has objections to the draft Government Assets Valuation Policy framework for the Public Sector 2025 as per its Memorandum to the 1st and 2nd Respondents written on 27th August 2025.
8. On 1st September 2025, the Applicant is said to have served the 1st and 2nd Respondents with a Letter demanding that the specific venues for the said public participation be shared with it and with the public within 24 hours, but that the Respondents have failed to provide the exact venues for the forums for the public participation leaving the Applicant with only the option of seeking legal redress herein. The Applicant states that it is evident that the

1st and 2nd Respondents intend to push through and adopt the draft Government Assets Valuation Policy framework for the Public Sector 2025 without the input of public and stakeholder's contrary to provisions of the law. This includes Articles 25(c) and 27(1), 35(1)(B) & (2), Article 41(1) & (2)(A) & (B), Article 47 and Article 50(1) and (2). The Applicant also references Sections 4 and 6 of the Fair Administrative Action Act, Sections 4, 7 and 13 of the Access to Information Act, 2016 Sections 13, 21 and 22 of the Valuers Act.

9. The Applicant objects to the draft Government Assets Valuation Policy Framework for the Public Sector 2025, arguing that it violates Sections 13, 21, and 22 of the Valuers Act, which reserves valuation practice to registered valuers under the Valuers Registration Board.
10. The Respondents opposed the application, with the 2nd Respondent filing a replying affidavit sworn on 15th October 2025 while the 3rd Respondent filed grounds of opposition dated 30th August 2025.
11. All parties filed written submissions in support of or in opposition to the application.
12. Without delving into the merits of the orders sought, I observe that the applicant in its Notice of Motion subject of this Judgment seeks leave of court to apply, which leave was already granted by this court in JR MISC E272 of 2025 on 4/9/2025, together with the prayer for stay, all sought in the

Notice of Motion dated 2/9/2025 brought under certificate of urgency, under the High Court Recess Rules.

13. In other words, the Notice of motion herein carry the same prayers as those contained in the Notice of Motion dated 2/9/2025 in the MISC JR E272 of 2025.

14. The question is, can this court consider such an application as a substantive Notice of Motion? The straight answer is NO. This is because, once leave is granted to apply, the exparte applicant is expected to file the Notice of Motion containing substantive prayers which he or she expects the Court to grant on merit. A party cannot reproduce the prayers for leave, seeking leave to apply, in the main motion.

15. Parties are bound by their pleadings and in this case, the Notice of motion dated 2/9/2025 is the one that is contemplated in Order 53 Rule 3 (1) of the Civil procedure Rules, once a party is granted leave to apply under Order 53Rule (2) of the Civil Procedure Rules. Submissions cannot substitute pleadings in any given case.

16. In **Associated Electrical Industries Ltd vs. William Otieno [2004] eKLR, Visram J,** (as he then was) stated as follows:

> ***"I entirely agree with the Appellant counsel's submissions. Parties are bound by their pleadings. The Respondent here pleaded one thing, and sought to prove another. In such a situation the Defendant/appellant was highly prejudiced. It ought to defend the case against it as stated in the Plaint, and the case stated in the Plaint was never proved. The***

respondent having found himself at variance made no application to amend the Plaint. The trial magistrate also noted the disparity between what was pleaded and still went ahead to entered judgment, which was clearly wrong in law."

17. In **Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others (2014) eKLR,** the Court cited the Malawi Supreme Court of Appeal in **Malawi Railways Ltd vs. Nyasulu (1998) MWSC 3,** where it was stated, an article by Sir Jack Jacob entitled **"The Present Importance of Pleadings" published in [1960] Current Legal Problems at p 174** wherein the author posited that: -

"As the parties are adversaries, it is left to each one of them to formulate his case in his own way subject to the basic rules of pleadings …for the sake of certainty and finality; each party is bound by his own pleadings and cannot be allowed to raise a different fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover, in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice….

In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called "Any Other Business" in the sense that points other than those specific may be raised without notice."

18. On the same point, Emukule J, in **Erastus Kihara Mureithi vs. Josphat Njoroge Ragi & 2 Others [2011] eKLR**, held that:

"…. In this case there was no basis for granting orders (b) & (c) of the motion dated 7th May, 2010 as the said Motion prayed for none of those others but for an order of detention for 6 months, the attachment of the applicant's property and sale thereof to compensate the applicants. Those were the specific remedies sought. The court could only grant those prayers, and no other prayers not prayed for."

19. In **Daniel Otieno Migore v South Nyanza Sugar Co. Ltd [2018] eKLR**, A C Mrima stated:

"11. It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded. That settled position was re-affirmed by the Court of Appeal in the case of Independent Electoral and Boundaries Commission & Ano. v Stephen Mutinda Mule & 3 others (2014) eKLR which cited with approval the decision of the Supreme Court of Nigeria in Adetoun Oladeji (NIG) v Nigeria Breweries PLC SC 91/2002 where

Adereji, JSC expressed himself thus on the importance and place of pleadings:

"...it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded…

…In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation."

20. The Supreme Court in **Raila Amolo Odinga & Another v IEBC & 2 others (2017) eKLR** held as follows:

"In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings…"

21. In other words, a Court, properly so moved, can only make such a specific order related to the prayers sought and not craft its own orders that tend to aid a party advance its case before it. To do otherwise in my view, would be

to allow the Court which is an arbiter to descend into the arena of the case and plead the case for one party. That is not permissible in law.

22. This Court cannot therefore, redraft the pleadings for the parties and the issue at hand where the applicant in the Notice of Motion reproduced the prayers for leave to apply, cannot be said to be a mere procedural defect or error curable by application of Article 159(2) (d) of the Constitution. The error goes to the substance of this case such that this Court is not enabled to consider the merits of the orders sought since they are orders for leave to apply for judicial review orders, and not substantive prayers.

23. I reiterate that despite the leave to apply being granted in MISC JR E272 of 2025 on 4/9/2025, the applicants in the Notice of Motion dated 2/9/2025 never sought for any substantive order of judicial review pursuant to Order 53 Rule (3) of the Civil procedure Rules which provides that when leave has been granted to apply, the application shall be made within 21 days by notice of motion to the High Court…

24. In this case, the only relevant thing is the heading "NOTICE OF MOTION."

25. As there is no substantive prayer for the substantive orders, and as this court cannot convert the pleadings for leave into substantive orders for consideration on merit, I find that there is nothing capable of being considered on merit. The Notice of Motion dated 2/9/2025 is found to be devoid of any substance and the same is hereby dismissed.

26. I make no orders as to costs.

27.This file is closed.

Dated, Signed and Delivered at Nairobi this 30th Day of December, 2025

R.E. ABURILI
JUDGE