

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
JUDICIAL REVIEW DIVISION
HCJR E405 OF 2026

REPUBLIC.....APPLICANT

VERSUS

**SPEAKER OF THE NATIONAL ASSEMBLY.....1ST
RESPONDENT**

**CHAIR, DEPARTMENTAL COMMITTEE ON TRADE &
INDUSTRY.....2ND RESPONDENT**

**PRINCIPAL SECRETARY, MINISTRY OF COOPERATIVES &
MSME3RD RESPONDENT**

**THOMAS INCHOGA MOGIRE EXPARTE
APPLICANT**

**PHILIP ACHIKI NDUBIEXPARTE
APPLICANT**

JUDGMENT

1. The Application that is before this court for determination is the one dated 11th December 2025 wherein the Applicant seeks the following orders

- 1) THAT this honorable court do issue an Order of Certiorari against the Respondents by bringing into court and quashing the committee report tabled on the floor of parliament on 14 of October 2025 that adopted the report tabled by the 3rd

Respondent in relation to the report on Gusii Mwalimu Investment Co Ltd in Liquidation.

- 2) THAT this honorable court be pleased to Issue an Order Mandamus compelling the Respondents to hear the Applicant by taking evidence from all parties and consider the memoranda filed by the Exparte Applicant in respect of the statement that was raised on the floor of the house on the 30th of April 2025.
 - 3) That this honorable court be pleased issue such orders/writs or directions so to ensure that the rights of the Applicant are protected.
 - 4) THAT costs of this Application be provided for.
- 2.** The Application is supported by the Supporting Affidavit of Thomas Inchoga Mogire.
 - 3.** The 1st Exparte Applicant is a shareholder/contributory and chairman of Gusii Mwalimu Investment Co Ltd (in liquidation). He argues that he has the full authority of the board of Mwalimu Investment Co Ltd (GUMICO LTD) (in liquidation).
 - 4.** It is his case that on 30.4.25 a petition was referred to the departmental committee by Hon Doris Donya for and on behalf of 8212 retired teachers of Gusii and Nyamira counties of Mwalimu Investment Co Ltd (GUMICO LTD) (in liquidation) of whom he is the chairman to the departmental committee on trade and industry

5. It was chaired by the 2nd Respondent. He wrote a memorandum which was filed with the clerk of the National Assembly on 22.5.2025.
6. It is the Applicants' case that subsequently the clerk of the National Assembly wrote a letter on 18/6/2025 to the PS ministry of cooperatives seeking for information concerning the liquidated company.
7. The 3rd Respondent wrote a letter to Gusii Mwalimu Sacco Ltd seeking information on the status of GUMICO LTD and Gusii Mwalimu Sacco which is an interested party in the outcome of the petition who gave information which according the Applicant's was doctored, misleading and one sided.
8. The Applicants are aggrieved because the 2nd Respondent who was already in possession of the detailed memoranda report that was filed on 22/5/2025 refused to consider the report and depended on the PS (3rd Respondent) to seek information from the Sacco which the 2nd Respondent tabled in parliament verbatim as set out in the attached clip from national assembly sitting on 14/10/2025.
9. It is the Applicants' case that the 2nd Respondent who is the chair of the departmental committee on trade and industry of parliament misled the house of parliament that he had dealt with the report but in the actual sense he had presented the report by the PS and moved parliament to adopt the report written from an outsider.
10. It is their case that the 1st Respondent who is the officer in charge of the National Assembly and an accomplished lawyer of repute failed to ensure that the committee chaired by the 2nd Respondent followed

standing orders by not ignoring standing orders and internal rules and in contravention of article 50 of the constitution of Kenya.

- 11.** They argue that had the 2nd Respondent bothered to interrogate the contents of memoranda he would have known that the 3rd Respondent's report on the alleged appointment of one Edward Ongiti on the 27th of August 1999 was misleading as there were no shareholders capable of holding a meeting the company to appoint a liquidator the company having been dissolved on 16 June 1998.
- 12.** They argue that parliament was duped to adopt a report that ignored the right procedures.
- 13.** According to them, the 3rd Respondent is guilty of misleading the 2nd Respondent as the general meeting that was alleged to have been held on the 27th of August 1999 was enjoined by the chief magistrate in civil suit no 711A of 1999 and the alleged liquidator never did anything.
- 14.** The report by the 3rd Respondent is very clear that the company was struck off the register on the 10 July 1998 and therefore had the 2nd Respondent who is backed by a battery of qualified lawyers invited Mr Mogire to defend the memoranda, parliament would not commit the illegality of adopting a misleading report.
- 15.** The Applicant argues that this amounted to a gross violation of his constitutional rights as envisaged in the fair administrative action Act. The failure or refusal to consider his memoranda was wholly unjustified.

- 16.** The Applicants filed a replying affidavit dated 4.3.26 to oppose the grounds of opposition in the following lines;
- 1) They plead with the honourable court to view the facts in the notice of motion as unopposed as the grounds of opposition approach cannot be used to deal with contested factual issues.
 - 2) It is their case that the 3rd Respondent by filing grounds of opposition out time and against the directions of the court that were duly served upon them without seeking leave or applying to aside the directions amounts to an attempt to circumvent the rules of procedure, considering that the matter was closed for judgment.
 - 3) The 3rd Respondent has not appealed or sought review from the court in respect of the directions of the of the court which renders the grounds of opposition incompetent and an abuse of the court process.
- 17.** They argue that the issues before the court are not about the dissolved company or anything related to the cases in court, and the issue of case no ELC 497 of 2016 cannot be cited as an ELC court had no jurisdiction to determine the dissolution of a company.
- 18.** They argue that in the absence of documents to support the allegations of the judgments of the superior courts which cannot be proved by grounds opposition renders the Application by the 3rd Respondent grounds of opposition does not address his lack of jurisdiction that pleaded to parliament and therefore any issues

pertaining to the dissolved company are matters of fact and any averments are hearsay.

- 19.** They argue that the 3rd Respondent cannot plead on behalf of the 2nd Respondent and equally he has not alluded to reasons why he is pleading jurisdiction of the 2nd Respondent.
- 20.** The 2nd Respondent who is the chair of the departmental committee on trade and industry is a creature of the constitution vide Article 124 and thus draws its mandate from the constitution which renders its decision to be subject to judicial review.
- 21.** According to them the issue of collateral attack is neither here nor there. What was in issues before parliament was whether the persons holding property of a dissolved company which matter is not before this court.
- 22.** They argue that the 3rd Respondent was sued for acting in excess of his mandate having held that he lacked jurisdiction in matter company law, it behooved him to decline to answer issues meant for the registrar of companies and his lack of jurisdiction is what brought him to court.
- 23.** The 3rd Respondent has not sought leave to file grounds of opposition and he cannot come through the backdoor and cannot plead for costs for all Respondents including those that have not even entered an appearance.

The Applicants' submissions;

- 24.** The Applicants served the Application as demonstrated in the return of service. The Application is unopposed. The Applicants filed the submissions on the dated 6th day of February 2026.
- 25.** Order 37 of the Civil Procedure Rules Section 7 8 9 10 and 11 of the Fair Administrative Action Act (FAAA) 2015, Kenya gazette notice no 165 of 2024 (Koome rules) Article 2, 10.
- 26.** The Exparte Applicants were not comfortable with the manner in which their petition was handled in parliament by the 2nd Respondent who was trying to resolve the dispute that was brought to parliament understanding order no 44(2).
- 27.** The 2nd Respondent resorted to seeking information from the ministry of cooperatives instead of the registrar of companies.
- 28.** The Applicants who had filed a detailed memorandum together with supporting affidavit had a legitimate expectation that their concerns would be addressed by the 2nd Respondent who instead went out of his way to seek information from the ministry of cooperatives when the matter in controversy was against the Office of The Registrar Of Companies a department under of the office of Honourable Attorney General.
- 29.** The Applicants are also aggrieved by the fact that the 1st and 2nd Respondents went ahead to adopt a report by the 3rd Respondent who had clearly demonstrated that the legal redress ought to be directed to the registrar of companies and the courts, the 3rd Respondent was categorical that the mandate in respect of the dispute in parliament did not lie in the ministry of cooperatives.

- 30.** The 1st and 2nd Respondent disregarded the 3rd Respondent advice and disclaimer and went on to adopt the report from a wrong department of government notwithstanding protestations by the principal secretary that the mandate/ authority to strike off a company rest on the registrar of companies.
- 31.** They submit that the Respondents ignored the legal position that jurisdiction is everything and the report by the principal secretary in charge of cooperatives was wrongly sought when the matter in controversy rested with the office of the Honourable Attorney General.
- 32.** In a spirited bid to resolve the issue, the Applicants wrote to the speaker intimating him that the report by the principal secretary was wrongly adopted despite the PS indicating that that matter in question lied on the registrar of companies.
- 33.** The Applicants are further aggrieved by the fact that the 2nd Respondent misled the house of parliament that the committee had interrogated and dealt with the report when in the actual sense he relied on a report based on information by the 3rd Respondent who despite the fact that his report had put a disclaimer, that the clerk of the national assembly ought to have sought information from the registrar of companies.
- 34.** The Applicants submit that the Respondents violated their rights by not affording them an opportunity to respond to the issues that were raised by the 3rd Respondent notwithstanding his capacity and lack of jurisdiction, despite the lamentations by the principal secretary.

35. From a casual look at the two reports (annexure 6 page 14 and annexure 8 on page 21), the report by the PS was adopted verbatim and the 2nd Respondent never interrogated the report to make his own findings.
36. Judicial Review Court is only concerned with the process only and not substance.
37. They submit that the post 2010 constitutional architecture that led to a shift in judicial review to include aspects of merit review of an administrative action.
38. The Applicants are fully aware of the common law approach in regards to prerogative orders, the constitutional approach and fair administrative action act which allow the court to consider merits of the case as opposed to process only inquiry —approach.
39. The Applicants are aware that there are decisions where the court dismissed their Application JR NO E353 OF 2025 on account that no leave was sought and there is another ruling by another court in the division in **Abdi Hassan Alias Geeley v National Police Service E015 OF 2025** where the court advised a counsel for the exparte Applicant pursuant to the 2024 (fair administrative action rules of 11/10/2024 the requirement for leave to challenge administrative decisions is inapplicable. The honourable judge in the division went to dismiss the Application that sought leave.
40. They submit that there is clear divergent jurisprudence from this court but we remain guided.

- 41.** The Applicants in coming to court choose a constitutional route and in particular under Article 47 of the constitution and fair administrative action act which constitutionalizes the right to fair administrative action and expanded the scope of judicial review and requires the courts to take cognisance of the new standards of review like (proportionality, efficiency, procedural fairness and the duty to give reasons).
- 42.** They submit that the bone of contention and the genesis of the acrimonious dispute started when the clerk of the National Assembly wrote a letter to the PS ministry of Cooperatives seeking the position on the plight of retired teachers of Gusii Mwalimu Investment co Ltd (GUMICO).
- 43.** The Principal Secretary (3rd Respondent) in response wrote back to the clerk giving a detailed background report on the plight and position of the company but with a disclaimer that the information sought ought to have been obtained from the registrar of companies insisting that the mandate of the company lied with the registrar of companies.
- 44.** They submit that the report of the 3 Respondents was not tested and the Applicants were never given an opportunity to challenge whatever was irregular.
- 45.** It is their submission that the failure to accord the Applicants an opportunity to contest the PS" s response was against the principles' of natural justice envisaged in the fair administrative action act.

46. The Applicants are alive to the fact that the abolition of leave is in consonant with Article 47 and FAAA rules which are part of the law applicable in judicial review.
47. They submit that the 1st Respondent ensured that the Applicants were locked out from taking part in their petition and the Applicants were denied a chance of rebuttal of the arguments contained in a report that were introduced into the chambers of parliament by the 3rd Respondent.
48. They submit that courts of law exist as watchdogs to ensure that parties public bodies in particular while discharging their mandates do not infringe the rights of citizens.
49. The Respondents despite clear provisions in article 47(2) that places an obligation to persons exercising public power to justify their administrative actions with written reasons to affected persons have never given reasons for the departure and process.
50. Reliance is placed in the case of Geothermal Development Co Ltd V Attorney General Petition No 352 of 2012 (eKLR) where the high court stated "that the duty to give reasons forms an important component of administrative action and that information concerning administrative proceedings should be sufficiently precise to put the individual on notice"

The 1st and 2nd Respondents Case;

51. It is their case through the replying affidavit filed on 4.3.26 that what came up before the House was the Response by Hon. Bernard Shinali,

the Member of Parliament for Ikolomani, to Hon. Dorice Donya, the Member of Parliament for Kisii County.

- 52.** Article 95(1) and (2) of the Constitution of Kenya, 2010 (the Constitution) provides that the National Assembly represents the people of the constituencies and special interests in the National Assembly, and deliberates on and resolves issues of concern to the people.
- 53.** Standing Order 44(2)(c) of the National Assembly Standing Orders provides that during the statement's hour, a Member may request for a statement from a committee Chairperson relating to matters under the mandate of the committee, which shall be made within twenty-one days of the request or such shorter period as the Speaker may direct.
- 54.** They submit that it is on the strength of the above provisions of law, that Hon. Dorice Donya, on the afternoon of the National Assembly sitting of 30th April, 2025, requested for a statement from the Chairperson of the Departmental Committee on Trade, Industry and Cooperatives regarding the plight of retired teachers who founded Gusii Mwalimu Investment Company Limited (GUMICO).
- 55.** They argue that as seen in the Hansard Report of 30th April, 2025, Hon. Dorice Donya requested for statement on the following:
 - a. A forensic audit into the transactions involving GUMICO's properties and assets.

- b. Measures taken by the Ministry to investigate and address the alleged irregular dissolution and take-over of Gusii Mwalimu Investment Company Limited.
 - c. Support mechanisms available to safeguard investments made by vulnerable groups such as retired teachers within the cooperative societies.
 - d. Legal and administrative assistance that can be extended to the affected retirees in seeking justice for compensation
- 56.** Thereafter, the Office of the Clerk of the National Assembly, through the letter dated 18th June, 2025, requested the Principal Secretary, State Department for Co-operatives, Ministry of Cooperatives and Micro, Small and Medium Enterprises for comprehensive written response to the statement by Hon. Dorice Donya.
- 57.** The Principal Secretary, State Department for Co-operatives, Ministry of Cooperatives and Micro, Small and Medium Enterprises, responded through the letter dated 1st August,2025.
- 58.** The response was as follows, response to the issues raised By Hon Doris Ndonya, MP Arising from the foregoing, we wish to respectfully respond to the issues raised by Hon. Doris Ndonya, MP, as follows:
- a) Request for a forensic audit into the transactions involving GUMICO's properties and assets Based on the information available, the processes involving GUMICO's properties and assets appear to have been initiated and conducted transparently, with resolutions passed by members and

confirmed through judicial proceedings. Therefore, at this stage, there does not appear to be sufficient justification to warrant a forensic audit. However, should a forensic audit be deemed necessary, it would fall under the mandate of the Registrar of Companies, as the company was liquidated under the provisions of the Companies Act.

- b) Measures taken by the Ministry to investigate and address the alleged irregular dissolution and takeover of GUMICO. As indicated in (a) above, GOMICO was registered and subsequently liquidated in accordance with the Companies Act. As such, any action regarding its dissolution, including investigation or review, falls within the jurisdiction of the Registrar of Companies, and not this Ministry.
- c) Support mechanisms available to safeguard investments made by vulnerable groups such as retired teachers within cooperative societies. From the information provided by Gusii Mwalimu Sacco and County Government officials, and as summarised earlier, the processes undertaken appear to have been fair, member driven, and in line with the law. Consequently, there is no indication at this time that would necessitate the introduction of additional support mechanisms by the Government.
- d) Legal and administrative recourse for affected retirees seeking restitution or compensation. Should any legal or administrative redress be considered necessary, it is advisable that such matters be directed to the appropriate

authorities, including the Registrar of Companies or the Judiciary, as the mandate does not lie with this Ministry.

- 59.** The Response to Hon. Dorice Ndongya was then read in the House on 14th October, 2025, by Hon, Benard Shinali. They argue that it is very clear that there is no report that was tabled in the House on 14th October, 2025, that is to be quashed by Court.
- 60.** Article 117 of the Constitution and Section 9 of the Parliamentary Powers and Privileges Act, CAP 6, guarantees freedom of speech and debate in Parliament. Thus, the doctrine of parliamentary privilege bars judicial interference.
- 61.** The Applicant seeks an order of Mandamus from Court compelling the Respondents to hear the Applicants by taking evidence from all parties and consider the memoranda filed by the Exparte Applicant in respect of the statement that was raised on the floor of the house on 30th April, 2025.
- 62.** The Memoranda was received by the National Assembly on 22nd May, 2025, and a quick perusal of it, one notes that the main issue inter alia is the request that the Departmental Committee on Trade, Industry and Cooperatives compels the attendance, production of documents and the processes that were put in place when GUMICO was wound up.
- 63.** The grievances raised in the Memoranda, are the same ones that were raised on the floor of the House by Hon. Dorice Donya on 30th April. 2025. The grievances were addressed through the Statement read in the House by Hon. Bernard Shinali on 14th October, 2025.

64. The Courts of Law on numerous occasions have held against interfering with the functions of other arms of the government, unless the function threatens to, or violates the Constitution of Kenya, 2010, as follows:

- a. In the Matter of the **Speaker of the Senate & another [2013] eKLR** as quoted with approval in **Justus Kariuki Mate & another v Martin Nyaga Wambora & another 2017) eKLR** it was stated:

"[61] The Supreme Court, however, cautioned against under Interference with running processes in other arms of Government. The Court thus pronounced itself (paragraph 61J:

"This Court will not question each and every procedural infraction that may occur in either of the Houses of Parliament. The Court cannot supervise the workings of Parliament. The institutional comit> between the three arms of government must not be endangered by the unwarranted intrusions into she workings of one arm by another" [emphases supplied]."

- b. In High Court Petition No. 229 of 2012- Trusted Society of Human Rights vs The Attorney General and Others as quoted with approval in Council of Governors & 3 others v Senate & 53 others [2015] eKLR, the Court, while considering the principle of separation of powers in relation to the judiciary and the

legislature, observed as follows at paragraph 63 and 64 of the judgment:

“63...we begin by re-stating that the doctrine of separation of powers is alive and well in Kenya. Among other pragmatic manifestations of the doctrine, it means that when a matter is textually committed to one of the coordinate arms of government, the Courts must defer to the decisions made by those other coordinate branches of government. Like many modern democratic Constitutions, the New Kenyan Constitution consciously distributes power among the three co-equal branches of government to ensure that power is not concentrated in a single branch. This design is fundamental to our system of government. It ensures that none of the three branches of government usurps the authority and functions of the others. This constitutional design is a direct influence from Montesquieu, the noted French Philosopher who is often called the father of modern constitutionalism. Noting that separation of powers was essential to the liberty of the individual, Montesquieu famously said:

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical

manner.... There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals. I CHARLES SECONDAT, BARON DE MONTESQUIEU, THE SPIRIT OF THE LAWS 151-52 (Thomas Nugent trans, Hafner Publishing Co. 1949) (1748).

164. Although the Kenyan Constitution contains no explicit clause on separation of powers, the Montesquienan influence is palpable throughout the foundational document, the Constitution, regarding the necessity of separating the governmental functions. The Constitution consciously delegates the sovereign power under it to the three branches of government and expects that each will carry out those functions assigned to it without interference from the other two." (Emphasis added).

- 65.** The statement read by Hon. Bernard Shinali on 14 October, 2025, in response to Hon.Dorice Donya, addressed the grievances raised the Memoranda by GUMICO.
- 66.** The National Assembly thus delivered on its mandate as provided by Article 95 of the Constitution, and in the spirit of doctrine of separation of powers, the Honourable Court is urged to refrain from compelling the National Assembly to once again consider the grievances of the Applicants.

67. There is no report that was tabled in the House on 14 October, 2025, that is to be quashed by Court, rather it was a statement read by Hon, Bernard Shinali.
68. It is their case that Judicial review jurisdiction under Article 165(6) of the Constitution cannot be exercised in a manner that negates an express constitutional protection under Article 117 of the Constitution.

The 3rd Respondents case;

69. In the grounds of opposition filed on 3.3.26, it is its case that its response dated 1st August 2025 to the Departmental Committee on Trade & Industry was not administrative action within the meaning of Section 2 of the Fair Administrative Action Act, 2015 but was information provision to a parliamentary committee exercising Article 125 oversight powers, and therefore no right to fair hearing attached.
70. It also argues that the Ex-Parte Applicants failed to exhaust internal parliamentary remedies as required by Section 9 of the Fair Administrative Action Act, 2015, having never petitioned the Speaker under Standing Order 256, invoked the Committee on Privileges, or moved the House to reconsider the report prior to filing this Application.
71. Reliance is placed in **Krystalline Salt Limited v Kenya Revenue Authority [2019] eKLR**, where the Court held that exceptional circumstances justifying bypass of alternative remedies must be "out

of the ordinary and require immediate intervention" – a threshold the Applicants have failed to meet.

72. It is its case that the validity of the dissolution of Gusii Mwalimu Investment Co. Ltd (GUMICO) in 1998 has been finally determined by the High Court in **Misc. Civil Application No. 2 of 2017 (Casmil Lucas Nyang'au & 9 others v Gusii Mwalimu Sacco Ltd [2017] eKLR)** and **ELC Case No. 497 of 2014 (Gusii Mwalimu Investment Co. Ltd v Gusii Mwalimu Sacco Ltd [2017] KEELC 2486)**, and upheld by the Court of Appeal on 23rd September 2023, rendering this Application a collateral attack on final judgments and an abuse of process.
73. In **Kamlesh Mansukhlal Damji Pattni v Republic [2013] eKLR**, the Court held that a collateral attack on a final judgment is an abuse of process and the Court will not permit parties to re-litigate matters already finally determined.
74. It argues that the prerogative order of mandamus cannot issue to compel the 3rd Respondent to reopen matters finally determined by competent courts or to ignore binding judicial precedent, as the 3rd Respondent is bound by court decisions and cannot misstate the law at the behest of unsuccessful litigants.
75. It argues that the prerogative order of certiorari does not lie against the Committee report dated 14th October 2025 as it was not a quasi-judicial decision but a recommendatory report to the House, and in **R v Secretary of State for Education, ex p Avon [1991] 1 QB**

558, the Court held that certiorari does not lie against purely advisory decisions.

- 76.** It argues that the Exparte Applicants acquiesced in the Committee process by failing to seek oral audience prior to the report's adoption on 14th October 2025, then delayed 58 days before filing this Application on 11th December 2025, disentitling them to equitable relief under Order 53 Rule 3(7) of the Civil Procedure Rules, 2010 and Section 6 of the Fair Administrative Action Act, 2015.
- 77.** The 1st and 2nd Respondents are the proper parties to any challenge relating to parliamentary procedure and privilege, and the 3rd Respondent cannot be compelled to dictate to Parliament how it should conduct its internal proceedings under Article 124(1) of the Constitution.

Analysis and determination;

Following are the issues for determination:

- 1) Can documents filed out of time and without leave form part of the record.
- 2) Do the Applicants have locus standi.

The 1st issue:

- 78.** The court directed the Applicants to serve the Application and set timelines for the Respondents to file responses on 2.2.26.
- 79.** The Applicants in compliance served the said documents more than once and even filed an affidavit of service with the court

- 80.** The 1st Respondent filed grounds of opposition on 3.3.26 while the 2nd and 3rd Respondents filed a replying Affidavit on 4.3.26.
- 81.** This court has discretion to enlarge time when documents are filed out of time when moved appropriately. No such leave was sought by the Respondents to file their pleadings out of time. The Exparte Applicants have taken issue with the late filing.
- 82.** Court directions must at all times be complied with. This Application was filed under the Fair Administration Action Act which provides that such Applications should be determined within 90 days.
- 83.** The grounds of opposition and the 2nd and 3rd Respondents' replying Affidavit are struck out.

Whether the Applicants have locus standi to sue;

- 84.** The Applicants are seeking an order of certiorari against the Respondents by bringing into court and quashing the committee report tabled on the floor of parliament on 14 of October 2025 that adopted the report tabled by the 3rd Respondent in relation to the report on Gusii Mwalimu Investment Co Ltd in Liquidation.
- 85.** The 2nd Applicant in his Affidavit depones that he is the Chairman. The 2nd Applicant further argues that the company was dissolved on 16th June 1998. The Applicants confirm this in the Memoranda to Parliament. The company was struck of the register on the 10 July 1998.
- 86.** The Applicants have sought to rely on what they refer to as an authority to appear and submit to Clerk National Assembly where

they define themselves as the two directors who were nominated by the board to appear and submit on the memoranda in respect of the matters of Gusii Mwalimu Investment Co Ltd By Order Of The Board James Ratemo Ribogi Secretary.

- 87.** Subsequently on 7/11/2025 the Applicants lodged with the Deputy Registrar of the High Court of Kenya At Nairobi an Authority to sue and defend proceedings in court
- 88.** The Notice intimated the Deputy Registrar that authority had been given by the board of directors of Gusii Mwalimu Investment Co Ltd (in liquidation) to the Applicants to file judicial review Application on behalf of the company.
- 89.** From the letter dated 3rd day of July, 2025 by PS in response to the statement by Hon Doris Ndonga, MP on the plight of retired teachers who founded gusii mwalimu investment company limited (GUMICO), the court notes many cases were filed thereafter: Several years after the conclusion of the liquidation process, a group purporting to be shareholders of the defunct GUMICO expressed dissatisfaction with the process.
- 90.** It notes that they have since filed petitions in court challenging the legality of the procedures followed during the winding-up of the company which ruled in favour of the process being Miscellaneous Civil Application No. 2 of 2017 - High Court of Kenya at Kisii: Casmil Lucas Nyanga'u & Others versus Gusii Mwalimu Sacco Society Limited (First Respondent) and The Attorney General (Second Respondent) and Environment and Land Court at Kisii - Case No. 497

of 2014: Gusii Mwalimu Investment Company Limited versus Gusii Mwalimu Sacco Society Limited. These cases, among others, demonstrate that the processes undertaken were conducted transparently, lawfully, and in accordance with the relevant legal frameworks.

- 91.** The court perused the ruling in Miscellaneous Civil Application No. 2 of 2017 - High Court of Kenya at Kisii: Casmil Lucas Nyanga'u & Others versus Gusii Mwalimu Sacco Society Limited (First Respondent) and The Attorney General (Second Respondent) and noted that;

The court has also perused the Hansard dated 14th October 2025 and notes GUMICO had 8,260 shareholders, each holding approximately 88 shares. Following this arrangement, the then Board of Directors of GUMICO voluntarily resigned and transferred the management of the company to the management committee of Gusii Mwalimu SACCO, under the facilitation of KNUT. The process was subsequently affirmed through a judicial ruling, including:

- 1. Miscellaneous Civil Application No.2 of 2017 in Casmil Lucas Nyang'au and others versus Gusii Mwalimu SACCO Limited and Attorney-General.*
- 2. The Environment and Land Case No.497 of 2014 versus Gusii Mwalimu Investments Company Limited and Gusii Mwalimu SACCO Society.*

- 92.** Those rulings confirmed that the procedures undertaken were transparent, lawful and consistent with the relevant legal frameworks.
- 93.** Lastly, the Ps observed that on the legal and administrative recourse of affected retirees seeking restitution or compensation, should any legal or administrative redress be considered necessary, it is advisable that such matters be directed to the appropriate authorities, including the Registrar of Companies or the Judiciary, as the mandate does not lie with this Ministry.
- 94.** On 14.10.25 the Applicant wrote to the Clerk of The National Assembly praying that the parliament revisits the petition through its relevant committee and determine the petition and matters raised therein;
- a. By Way Of Viva Voce Evidence.
 - b. Deals with this petition urgently.
 - c. The speaker compels the committee rehear the matter substantively by inviting the PS, liquidator and Sacco officials to attend the committee for cross examination and take evidence.
 - d. Any other recommendation that the hon. Parliament may deem fit and just over this matter.
 - e. In the alternative the house considers this petition as an independent petition and the same be subjected to the provisions of petitions to parliament (procedure) act.

95. The court finds that the Applicants lack the locus standi to file this Application in the status of chairmen, directors or shareholders of a company which for all intents and purposes is non-existent having been dissolved almost 20 years ago.
96. In the case of **Matemu v Trusted Society of Human Rights Alliance & 5 others (Civil Application 29 of 2014) [2014] KESC 6 (KLR) (9 December 2014) (Ruling)**

“61. Locus standi is defined in Black’s Law Dictionary, 9th Edition (page 1026) as “the right to bring an action or to be heard in a given forum”.

.....

In John Wekesa Khaoya v. Attorney General, Petition No. 60 of 2012; [2013] eKLR the High Court thus expressed the principle (paragraph 4):

“...the locus standi to file judicial proceedings, representative or otherwise, has been greatly enlarged by the Constitution in Articles 22 and 258 of the Constitution which ensures unhindered access to justice...”

Article 22 of the Constitution thus provides:

“(1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—

(a) a person acting on behalf of another person who cannot act in their own name; (b) a person acting as a member of, or in the interest of, a group or class of persons; (c) a person acting in the public interest; or

(d) an association acting in the interest of one or more of its members” [emphasis supplied].

69. And Article 258 thus provides:

(1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—

(a) a person acting on behalf of another person who cannot act in their own name; (b) a person acting as a member of, or in the interest of, a group or class of persons; (c) a person acting in the public interest; or

(d) an association acting in the interest of one or more of its members” (emphasis supplied).

97. A company that was dissolved 20 years ago cannot have legal officials or a board that has the legal capacity to instruct the Applicants to sue like the Applicants have done.

98. Sections 339(6) and 340 of the Companies Act (herein "the Act") provide:

“339 (6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register the Court on an Application made by the company or members or creditor before the expiration of ten years from the publication in the Gazette of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon a certified copy of the order being delivered to the registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.”

“340. Where a company is dissolved, all property and rights whatsoever vested in or held in trust for the company immediately before the dissolution (including leasehold property but not including property held by the company in trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the Court under section 338 or section 339, be deemed to be bona vacantia, and shall accordingly belong to the Government.”

- 99.** Under section 339 (6) of the Act, any member of the company has a right to apply to restore the company to the register and court has jurisdiction to make such an order if satisfied that the company was at the time of the striking off carrying on business, or in operation or otherwise that it would be just that company be restored to the register as long as the said Application is brought before the expiry of ten (10) years from the date of the publication of the gazette notice dissolving the company.
- 100.** The 2nd Applicant confirms that the company was dissolved on 16th June 1998. The Applicants confirmed in the Memoranda to Parliament that the company was struck of the register on the 10 July 1998. If at all the Applicants were to move the court, they should have taken action before 10 years.
- 101.** The Company that was struck of the register of companies on the 10th July 1998 cannot have a board or a secretary that can authorise the Applicants to sue.
- 102.** Consequently, court finds that the Applicants lack the locus standi to sue.
- 103.** The suit cannot stand and the same is dismissed.

Determination;

- 104.** The Application lacks merit.

Costs;

- 105.** Each party shall bear their costs.

Orders;

The Application is dismissed with no orders as to costs.

Dated, signed and delivered at Nairobi this 9th day of March, 2026.

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J. CHIGITI (SC)

JUDGE