



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

MISCELLANEOUS APPLICATION NO. 62 OF 2020

(Before Hon. Lady Justice Maureen Onyango)

IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW

ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS

IN THE MATTER OF: ARTICLES 23(3)(f) OF THE CONSTITUTION

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT, 2015

IN THE MATTER OF: SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

UKUR YATANI, CABINET SECRETARY,

THE NATIONAL TREASURY AND PLANNING.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

AND

THE STRATEGIC FOOD RESERVE TRUST FUND.....1ST INTERESTED PARTY

ABASS MAALIM MOHAMMED.....2ND INTERESTED PARTY

LUCAS CHEPKITONY.....3RD INTERESTED PARTY

SUSAN WAIRIMU MUKIRI.....4TH INTERESTED PARTY

GERALD MUSILA.....5TH INTERESTED PARTY

NOAH WEKESA.....6TH INTERESTED PARTY

EX PARTE: OKIYA OMTATAH OKOITI

JUDGMENT

1. The Ex parte Applicant filed a Notice of Motion dated 8th July, 2020 seeking the following orders:

a. That an order of certiorari do issue, to bring to this Court for purposes of being quashed, and to be quashed, the Gazette Notice No. 4134 of 17th June, 2020 which was published by the 1st Respondent on 17th June, 2020 in a special issue of the Kenya Gazette Vol. CXXII – No. 117 and whatever acts or omissions pursuant thereto.

b. THAT an order of prohibition do issue, prohibiting the respondents herein, and any other person howsoever acting from implementing, giving effect to or enforcing Gazette Notice No. 4134 of 17th June, 2020 which was published by the 1st Respondent on 17th June, 2020 in a special issue of the Kenya Gazette Vol. CXXII- No. 117.

c. That an order of mandamus do issue, to compel the 1st Respondent to adhere strictly to the Public Finance Management (Strategic Food Reserve Trust Fund) Regulations, 2015.

d. That consequent to the grant of the prayers above the Court be pleased to issue such further directions an order as may be necessary to give effect to the foregoing orders, and/or favour the cause of justice.

e. That costs be in the cause.

2. The application is premised on grounds that:

i) The 2nd to 5th Interested Parties were appointed for the 1st term as members of the Strategic Food Reserve Oversight Board with effect from 1st August, 2015 vide Gazette Notice No. 6048 of 19th August, 2015 which was published on the same date in a special issue of the Kenya Gazette Vol. CXVII-No. 87 vide Gazette Notice 8729 of 22nd October, 2016 the 6th Interested Party was appointed as the Chairman of the Board.

ii) Vide Gazette Notice No. 4395 of 6th May 2019 the 2nd to 5th Interested Parties were reappointed for their second and final term with effect from the same date. These appointments are due to lapse on 5th May, 2022. Vide letters dated 24th June, 2019 and 5th July, 2019, the Head of Public Service reappointed the 6th Interested Party as the Chair of the Board for a further 3 years with effect from 26th October, 2019 until 25th October, 2022.

iii) The purported revocation of the appointment of the 2nd to 5th Interested Parties, and the false declaration that the tenure of the 6th Interested Party had lapsed, was made vide Gazette Notice No. 4134 of 17th June 2020 which was published on 17th June, 2020 in a special issue of the Kenya Gazette Vol. CXXII- No. 117.

iv) The 1st Respondent does not have powers to dismiss the 2nd to 5th Interested Parties arbitrarily and whimsically without just cause and reference to the grounds for removal set out in Clause 2 (b) of the Schedule of the parent regulations.

v) The purported revocation of the appointment of the 2nd to 5th Interested Parties and the false declaration that the 6th Respondent's tenure lapsed, is being undertaken to irregularly and unlawfully remove steadfast public servants from office.

vi) Gazette Notice No. 4134 of 17th June, 2020 was issued to advance improper and corrupt purposes of the maize importation cartels including to deliberately defeat the administration of justice in **Nairobi High Court JR Application No. 93 of 2020 Republic v the Cabinet Secretary for National Treasury and Planning & another and the Strategic Food Reserve Trust Fund and 41 Others (Interested Parties) Ex-parte Okiya Omtatah Okoiti and Nairobi High Court Petition Mo. 145 of 2020 Okiya Omtatah Okoiti v the Cabinet Secretary for National Treasury and Planning & 3 Others and the Strategic Food Reserve Trust Fund (Interested Party).**

vii) The purported unlawful and capricious revocation of the appointment of the 2nd to 5th Interested Parties without giving them a chance to be heard is contrary to Article 47 of the Constitution as read with the Fair Administrative Action Act, 2015. Further, the removal of the 2nd to 5th Interested Parties and the false declaration that the 6th Interested Party's appointment had expired so as to punish them for being steadfast in the discharge of their mandate is notary to Article 236 of the Constitution.

viii) The purported unlawful removal of the Fund's independent directors, with no replacement whatsoever of another agency with a similar mandate, is a grave breach of the government's obligations to secure Kenyans' right to life as provided by Article 26(1) of the Constitution.

ix) The 1st Respondent violated Articles 10, 47, 73, 75, 129 and 153 (4) of the Constitution which expressly require him to act under the law, serve the public interest, reject improper motive and corrupt practices, and shun any conflicts of interest between his official duties and private interests.

3. The application is supported by a Statutory Statement dated 8th July, 2020 and a Verifying Affidavit sworn by the Ex parte Applicant on even date.

4. The Respondents filed a Replying Affidavit sworn by Dr. Julius Monzi Muia, the Principal Secretary of the National Treasury on 27th November, 2020. The Affiant confirms that the Cabinet Secretary vide Gazette Notice No. 6049 dated 19th August, 2015 appointed the 2nd to 5th Interested Parties to the Oversight Board of the 1st Respondent under Regulation 7(2)(f) of the Public Finance Management (Strategic Food Reserve Trust Fund) Regulations, 2015. He further confirms that they were reappointed for a further term of 3 years.

5. The Affiant deposes that on 10th March, 2020, a joint Cabinet Memorandum was drawn to look into the overlapping functions of the National Cereals and Produce Board and Strategic Food Reserve Trust Fund reforms. In its 2nd meeting held on 19th March, 2020 the Cabinet directed the Cabinet Secretary to within 6 months wind up the Fund in accordance with section 24 (9) of the Public Finance Management Act, 2012 and Regulations 209 of the Public Finance Management (National Government) Regulations, 2015.
6. He deposes that the Cabinet Secretary through the Public Finance Management (Strategic Food Reserve Trust Fund) (Revocation) Regulations 2020 published under Legal Notice No. 61 of 2020 dated 14th April, 2020 revoked Legal Notice No. 15 of 2015 and Legal Notice No. 145 which established the Strategic Food Reserve Trust Fund.
7. He avers that on 8th June, 2020 the Cabinet Secretary for National Treasury and Planning wrote to the Clerk of the National Assembly forwarding the Public Finance Management (Strategic Food Reserve Trust Fund) (Revocation) Regulations, 2020 together with a signed Explanatory Memorandum for purposes of approval by the National Assembly. He contends that upon approval by the National Assembly, the Fund was wound up and the Cabinet Secretary revoked the appointment of the 2nd to 5th Interested Parties through the Gazette Notice dated 17th June, 2020.
8. With respect to the tenure of the 6th Interested Party, the affiant deposes that his tenure lapsed on 21st October, 2019 having been appointed on 21st October, 2016.
9. He denies the allegation that the Cabinet Secretary does not have power to revoke the appointment of the 2nd to 6th Interested Parties. He posits that by virtue of the contemplated reforms undertaken in the sector, including restructuring of the Fund which the government has the mandate to undertake, the offices were abolished by operation of the law and the Interested Parties cannot be reinstated to defunct offices.
10. He objects to the use of public documents by the Ex parte Applicant and avers that the letters produced by the applicant are not ordinarily in his custody thus should be expunged from the record.
11. He denies that the impugned Gazette Notices were designed to defeat administration of justice and avers that the issues raised in the application are not employment issues thus this Court lacks jurisdiction to hear and determine the matter.
12. The matter proceeded by way of written submissions.

Ex parte Applicant's submissions

13. The Ex parte Applicant submitted that the application is filed in good faith pursuant to Articles 3(1), 22 and 28 of the Constitution and that it meets the tests of bona fide public interest litigation. He submitted that the facts relied upon in the motion are prima facie true and correct in the sense that the 1st Respondent violated clear provisions of the Constitution and national legislation. He relied on the case of **Kenya Anti-Corruption Commission v Deepak Chamnlal Kamani & 4 Others [2014] eKLR**. It further relied on the case of **People's Union for Democratic Rights & Others v Union of India & Others (1982) 3 SCC 235**.
14. The Ex-Parte Applicant submitted that he is vested with standing to move this Court and that Articles 22 and 258 of the Constitution take away the notion that *locus standi* meant that only an aggrieved party demonstrating damage or harm can approach a Court of law and seek a remedy. He relied on the case of **Timothy Otuya Afubwa & another v county Government of Trans Nzoia & 3 Others [2016] eKLR** where the Court held that the drafters of the Constitution intended that under Article 22 of the Constitution nobody would be locked out of the seat of justice when his interest or those of the public are threatened. He further relied on the case of **Trusted Society of Human Rights Alliance v Nakuru Water and Sanitation Services Company & another [2013] eKLR** and **J Harrison Kinyanjui v Attorney General & another [2016] eKLR**.
15. He submitted that this Court has jurisdiction to hear and determine this matter as it is an employment dispute. He relied with the case of **United States University (USIU) v Attorney General [2012] eKLR** where the Court held that to exclude the jurisdiction of this Court from dealing with any rights and fundamental freedoms arising from relations under the then section 12 of the Industrial Court Act or interpret the Constitution would lead to a situation where there is parallel jurisdiction between the High Court and this Court.
16. He further submitted that section 12 of the Employment and Labour Relations Court Act as read with Rule 28 of the Employment and Labour Relations Court (Procedures) Rules, 2016 empowers this Court to grant a prohibitory order and any other order to meet the ends of justice.
17. He relied on the decision of the Court of Appeal in **Prof. Daniel N. Mugendi v Kenyatta University & Others** that this Court can determine industrial and labour relations matters alongside claims of fundamental rights ancillary and incidental to these matters.
18. With respect to constitutional violations, he argued that the 1st Respondent failed to adhere to the rule of law and acted *ultra vires* of his mandate under Paragraph 2(b) of the Public Finance Management (Strategic Food Reserve Trust Fund) Regulations 2015. He submitted that the 1st Respondent had an obligation to be transparent and accountable and to exercise the principles of good governance including Article 47(1) and (2) of the Constitution.
19. He contended that Article 47 is breached when the Respondent's actions are unreasonable as was recognised in the case of **Republic v Kenya Power & Lighting Co. Ltd & Another [2013] eKLR**. That the Court can interfere where there is improper exercise of discretion and that where a body takes account of irrelevant considerations any decision arrived at becomes unlawful. He further relied on the decisions in **Republic v National Police Service Commission ex-parte Daniel Chacha [2016] eKLR** and **Dr. Christopher Ndarathi Murungaru v AG & another Civil Application No. Nai 43 of 2006 (24/2006)**.

20. He submitted that the threshold for constitutional pleadings filed under **Article 22 of the Constitution** is set in the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, the Mutunga Rules**. He argued that the Mutunga Rules vest this Court with epistolary jurisdiction under Section 10(3) and (4) and that the adoption of this jurisdiction for matters of public interest litigation does away with the requirement that parties file formal pleadings in such cases.

21. He further argued that constitutional complaints commenced under Articles 3(1) and Article 258(1) of the Constitution are not subject to the Civil Procedure Rules but to the procedure laid out in the Constitution under Articles 22, 48, 50(1), 159, 160, 258 and 259. It was his submission that where pleadings brought under article 22 do not measure up to the threshold enunciated in **Anarita Karimi v Republic [1976-80] 1KLR 1272** and other cases this Court is enjoined by dint of section 10(3) and (4) of the Mutunga Rules to have them amended to meet the threshold but not to strike them out.

22. The Ex parte Applicant contended that the 2nd to 6th Interested Parties were not granted a fair hearing as no formal charges were preferred against any of them and they were not invited to defend themselves at any forum. It was his submission that the 1st Respondent impugned administrative action is unconstitutional thus null and void.

23. He argued that the power granted to the Cabinet Secretary under Paragraph 2(b) of the Public Finance Management (Strategic Food Reserve Trust Fund) Regulations 2015 as read with Section 7(2) and Section 51 of the Interpretation and General Provisions Act to dismiss the Chair or a member of the Board is not done at his pleasure and such power can only be exercised reasonably. In support of this position, he relied on the Court of Appeal decision in **Narok County Government & another v Richard Bwogo Birir & Another [2015] eKLR** that the Respondent was not informed of any allegations against him or given an opportunity to defend himself and that there was no adherence to the due process of the law.

24. He submitted that these values and principles of public service under Article 232 of the Constitution apply to the public service in all state organs. He relied on the case of **Re Kadhis' Court: Very Right Rev Dr. Jesse Kamau & Others v The Hon. Attorney & another, HMCA No. 890 of 2004** and **Keroche Industries Limited v Kenya Revenue Authority & 5 Others (2007) KLR 240**.

25. He submitted that since there is no evidence before this Court that the Respondent's impugned gazette notice has been withdrawn or otherwise nullified through administrative action, the orders sought are still appropriate and should be granted.

26. With respect to the order of certiorari, he submitted that the Court has jurisdiction to quash the document in issue and anything done under it. With regards to the order for prohibition, he relied on the decision in **Kenya National Examinations Council v Republic Ex parte Geoffrey Gathenji Njoroge & Others Civil Appeal No. 266 of 1996**. He argued that if the 1st respondent will implement the irregular, unlawful and unconstitutional action should it not be prohibited.

27. He argued that the 1st Respondent has refused or failed to discharge its constitutional and statutory duty and the Court ought to issue an order of mandamus for the 1st Respondent to comply with the Public Finance Management (Strategic Food Reserve Trust Fund) Regulations, 2015.

28. The Ex parte Applicant submitted that the suit being filed in the public interest and being between a private citizen and the state, the Court should not award costs to the Respondents in the event the motion is successful. He argued that each party should bear its own costs should the motion fail and relied on the case of **Kenya Human Rights Commission v Communications Authority of Kenya & 4 Others [2018] eKLR**.

29. In conclusion, he submitted that the motion tilts in favour of the public interest in constitutionalism and the rule of law hence it should be allowed as prayed.

Respondents' Submissions

30. The Respondents submitted that under Section 24(8) of the Public Finance Management Act, the Cabinet Secretary for National Treasury has powers to wind up a National Public Fund with the approval of the National Assembly. It maintained that upon approval by the National Assembly of the Public Finance Management (Strategic Food Reserve Trust Fund) (Revocation) Regulations 2020 the Fund stood wound up and the Cabinet Secretary revoked the appointment of the 2nd to 5th Interested Parties through Gazette Notice dated 17th June, 2020.

31. It was their submission that the defunct fund ceased to exist by operation of the law and the question should be whether this Court has jurisdiction to question an executive decision of the cabinet as well as the power by parliament to approve subsidiary legislation and the power of the minister to make subsidiary legislation.

32. They urged that the Court should never purport to stay the operation of law when the law is challenged for whatever reason because the Court cannot legislate. That the Court should let the law operate until the determination of the matter to avoid creating a vacuum and to accord other state organs due deference. They cited the case of **Kenya Union of Domestic Hotels, Education Institutions & Hospitals, Workers Union v Kenya Revenue Authority & 3 Others [2014] eKLR** in which it was held that the Court is entitled to presume that the legislature acted in a constitutional and fair manner unless the contrary is proved. They further relied on the finding in **Tukero Ole Kina v Attorney General & another [2019] eKLR**.

33. They argued that the documents relied upon by the Ex parte Applicant are ordinarily not in his custody and he has not stated how he obtained the public documents. They submitted that the applicant's practice is spurious and motivated by selfish considerations if he is to violate his judgment in **Okiya Omtatah Okioti & 2 Others v Attorney General & 4 Others [2020] eKLR**, that it would be detrimental to the administration of justice and against Article 50(4) of the Constitution to admit irregularly obtained documents.

34. The Respondent objected to the locus of the ex-parte on behalf of the Interested Parties who are capable of filing their own suits if they are aggrieved by the Cabinet Secretary's decision. They argued that the probative value of the affidavit sworn by the Ex parte Applicant concerning the appointments and revocation of the appointments of the Interested Parties is questionable as this can only be in the knowledge of the said parties.

35. They contended that the allegation that the 2nd to 6th Interested Parties were not given a hearing before their appointments were revoked is hearsay. They submitted that the Fund having been disbanded by operation of law and its functions transferred, it has no mandate to oversee funds under it. With respect to the order for certiorari, they submitted that since the Fund was wound up the offices became defunct and there are no offices for the 2nd to 6th Interested Parties to go back to.

36. They contended that the order for prohibition can only be issued if the gazette notice contravened the law, was in excess of jurisdiction and departed from the rules of natural justice and that the applicant has not demonstrated that this was the case. They submitted that the order seeking to compel the 1st Respondent to strictly adhere to the Public Finance Management (Strategic Food Reserve Trust Fund) Regulations 2015 is superfluous and moot as the Regulations were repealed vide Legal Notice Number 61 dated 14th April, 2020.

37. They further submitted that an order of mandamus cannot be issued to compel the non-performance of a statutory duty as sought by the applicant. They prayed that the application be dismissed with costs.

Determination

38. The issues for determination are:

- (i) Whether this Court has jurisdiction to determine the matter;
- (ii) Whether the Ex parte Applicant has locus to institute the suit;
- (iii) Whether the documents listed in paragraph 15 of the Replying Affidavit should be expunged;
- (iv) Whether the revocation of the appointment of the Interested Parties was unlawful;
- (v) Whether the Ex parte Applicant is entitled to the Orders sought.

Jurisdiction

39. The Respondent avers that this Court has no jurisdiction to determine the matter as the issues raised are not employment issues. The revocation of appointment of the Interested Parties is a matter that deals with employment of the Interested Parties. This matter is therefore rightfully before this Court pursuant to section 12 of the Employment and Labour Relations Court Act.

Documents

40. It is the Respondent's case that the Ex parte Applicant obtained the documents annexed to his application illegally. The Ex parte Applicant did not explain to the Court how the said documents were acquired by him. The Court of Appeal in **Okiya Omtatah Case (supra)** cited by the Respondents held:

"We reiterate that the appellants claimed to have been supplied with the contentious documents by "conscientious citizens" and "whistleblowers". Based on the foregoing, the appellants ought to have requested the concerned Government Departments to supply them with the information they required, and to which they were entitled to receive in accordance with Article 35 of the Constitution. It was not necessary for the appellants to resort to unorthodox or undisclosed means to obtain public documents. If they deemed the documents were relevant (as indeed they were) then, they ought to have invoked the laid down procedure of production of documents.

84. We therefore agree with the learned Judge that it would be detrimental to the administration of justice and against the principle underlying Article 50(4) of the Constitution to in effect countenance illicit actions by admission of irregularly obtained documents. However well intentioned "conscientious citizens" or "whistleblowers" might be in checking public officers, there can be no justification, as pointed out by the Supreme Court, for not following proper procedures in the procurement of evidence."

41. Notably, some of the documents are marked as "Confidential" or "Secret". They were therefore in the custody of the Ex Parte Applicant without authority. I accordingly expunge all the documents listed under paragraph 15 of the Replying Affidavit of Dr. Julius Monzi Muia from the record.

Locus

42. The Respondents aver that the Ex parte Applicant has no locus to institute the suit as the Interested Parties are capable of filing their own suits and that they chose not to file suits despite being directly affected.

43. Article 22(1) and (2) of the Constitution entitles a person to institute a suit on his own behalf, on behalf of others or in the public interest claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. The Constitution

however limits the persons who may enforce the Bill of Rights at both Articles 22 (1) and (2) and Article 258 as follows –

22. Enforcement of Bill of Rights

(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.

44. A person who comes to Court for judicial review orders must thus fit into one or other of the categories set out in Articles 22 and 258 and must specify the capacity in which they have approached the Court.

45. In the instant suit, the Ex Parte Applicant describes himself as

“a law abiding citizen of Kenya, a public spirited individual, a human rights defender, and a strong believer in the rule of law and constitutionalism. He is a member of Kenyans for Justice and Development Trust, which is a legal trust, incorporated in Kenya and founded on republican principles and set up with the purpose of promoting democratic governance, economic development and prosperity.”

46. The prayers sought herein essentially seek to preserve the jobs of the 2nd to 6th Interested Parties as Chairperson and Members of the 1st Interested Party. The 6th Interested Party filed a replying affidavit on his own behalf and on behalf of the 2nd to 5th Interested Parties sworn on 30th January 2021 in which he elaborately articulates the position of the 2nd to 6th Interested Parties. He and the 2nd to 5th Interested Parties therefore have capacity to approach this Court directly.

47. Further, the letters of appointment of the 6th Interested Party dated 7th November 2016 and 24th June 2019 both show that he was appointed under a private contract of service which sets out his terms of engagement including taxable monthly honorarium, allowances including sitting allowance, accommodation allowance, lunch allowance and telephone allowance where applicable, transport, accident insurance and medical cover among others.

48. It is my finding that the 2nd to 6th Interested Parties have capacity to institute a suit to protect their fundamental rights and freedoms and did not require the Ex Parte Applicant to do so on their behalf.

49. I thus find that the Ex Parte Applicant has not demonstrated that he has locus to institute the instant proceedings on behalf of the 2nd to 6th Interested Parties. He however has capacity to institute the proceedings on behalf of the 1st Interested Party which until its degazettement, was a public institution.

Revocation of appointment

50. The Ex parte Applicant’s contention is that the revocation of the appointment of the 2nd to 5th Interested Parties and the notification of the lapse of the term of the 6th Interested Party was unlawful as the 1st Respondent had no power to dismiss them. The Ex Parte Applicant further contended that the Interested Parties were not given an opportunity to be heard and that the revocations were made to advance tailored interests and cripple the Fund.

51. The Respondent produced a Joint Cabinet Memorandum by the Cabinet Secretary for Agriculture, Livestock, Fisheries and Cooperatives, the Cabinet Secretary for the National Treasury and Planning and the Attorney General whose findings were that there was an overlap in the legal mandates between the Fund and the National Cereals and Produce Board. It proposed that to eliminate the duplication of roles between the two bodies, Legal Notice No. 15 of 2015 which created the Fund be revoked.

52. Consequently, the Public Finance Management (Strategic Food Reserve Trust Fund) Regulations were revoked vide Legal Notice No. 61 of 2020 dated 14th April, 2020 and the Interested Parties appointment revoked on 17th June, 2020.

53. The Fund was established pursuant to Section 24(4) of the Public Finance Management Act. Section 24(8) of the Act provides:

The Cabinet Secretary may wind up a national public fund with the approval of the National Assembly.

54. The Ex parte Applicant has not demonstrated that the winding up of the Fund and the subsequent revocation of the appointment of the 2nd to 5th Interested Parties and the end of the tenure of the 6th Interested Party, did not follow the laid down procedure. First, in a letter dated 8th

June, 2020, the Cabinet Secretary National Treasury & Planning informed the Clerk of the National Assembly of the Public Finance Management (Strategic Food Reserve Trust Fund) (Revocation) Regulations and forwarded both the Regulations and a signed Explanatory Memorandum for the Regulations.

55. Neither the Ex parte Applicant nor the Interested Parties demonstrated that they presented their memorandum on the winding up of the fund before the National Assembly taking into consideration the positions held by the Interested Parties in the Fund.

56. None of the Interested Parties filed pleadings in this suit disputing the revocation of their appointment on account of the Fund being wound up. I find that the 1st Respondent acted within his mandate in revoking the appointment of the Interested Parties which had in any event been rendered redundant by operation of the law following the revocation of the Legal Notice establishing the Fund. The Fund having being wound up, there are no offices for the 2nd to 6th Interested Parties to be sent back to in a defunct Fund. The orders sought are therefore incapable of implementation.

57. I therefore find that the application has no merit and accordingly dismiss it with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 10TH DAY OF DECEMBER 2021

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020, that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1** of **the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MAUREEN ONYANGO

JUDGE