



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

JUDICIAL REVIEW APPLICATION NO. 3 OF 2014

REPUBLIC.....APPLICANT

-VERSUS-

ARNORD KARANI NJIRU, FUND ACCOUNT MANAGER,

LAIKIPIA EAST CONSTITUENCY FUND..... 1ST RESPONDENT

HON. ANTHONY MUTAHI KIMARU.....2ND RESPONDENT

RASHID MOHAMMED, DEPUTY COUNTY COMMISSIONER,

LAIKIPIA COUNTY.....3RD RESPONDENT

NEWTON KABUTHIA, CHAIRMAN, LAIKIPIA EAST

CONSTITUENCY

DEVELOPMENT FUND.....4TH RESPONDENT

ANN WANGECHI MWANGI, MEMBER LAIKIPA EAST

CONSTITUENCY

DEVELOPMENT FUND COMMITTEE.....5TH RESPONDENT

NIMO ALI AMIN, MEMBER LAIKIPA EAST

CONSTITUENCY

DEVELOPMENT FUND COMMITTEE.....6TH RESPONDENT

MARTIN NDERITU NJUGUNA, MEMBER LAIKIPA EAST CONSTITUENCY

DEVELOPMENT FUND COMMITTEE.....7TH RESPONDENT

JOSEPH G.NDUNG’U, MEMBER LAIKIPA EAST

CONSTITUENCY

DEVELOPMENT FUND COMMITTEE.....8TH RESPONDENT

ANN WANGUI KAHUTHU, MEMBER LAIKIPA EAST

CONSTITUENCY

DEVELOPMENT FUND COMMITTEE.....9TH RESPONDENT

JANE WAIRIMU, MEMBER LAIKIPA EAST

CONSTITUENCY

DEVELOPMENT FUND COMMITTEE.....10TH RESPONDENT

LAIKIPIA EAST CONSTITUENCY DEVELOPMENT

FUND COMMITTEE11TH RESPONDENT

-AND-

AMIN MOHAMMED ALIEX PARTE APPLICANT

(Before Hon. Justice Byram Ongaya on Thursday 30th April, 2015)

JUDGMENT

The ex parte applicant Amin Mohammed Ali filed an application for judicial review orders by the notice of motion dated 18.12.2014. The application was filed on 18.12.2014 through Magee Wa Magee & Company Advocates. Learned counsel Ramadhan Abubakar appeared for the applicant throughout the hearing.

The notice of motion was brought under Articles 27, 28, 35, 41 and 50 of the Constitution, Section 9 of the Law Reform Act, Order 53 of the Civil Procedure Rules and Section 24 of the Constituencies Development Fund Act. The applicant prayed for orders that:

1. The honourable court be pleased to issue an order of certiorari against the respondents quashing the alleged resolution of the 11th respondent made on 30.06.2014 to remove and expel the ex parte applicant as the chairman and committee member of the 1st respondent.
2. The honourable court be pleased to issue an order of certiorari against the respondents quashing the appointment of Newton Kabuthia as the Chairman of the 11th respondent.
3. The honourable court be pleased to issue an order of mandamus against the respondents compelling them to reinstate the ex parte applicant as the member and chair of the 11th respondent.
4. There be prohibitory orders against the respondents prohibiting them from interfering with the ex parte applicant's exercise of his statutory duty as the chairman of the 11th respondent.
5. A declaration be issued to declare that the ex parte applicant remains the lawful holder of the position of chairman for the 11th respondent.
6. The honourable court be pleased to find that the alleged resolution and decision of the respondents in respect of the removal and expulsion of the ex parte applicant from the committee constitute a conduct that is in full violation of the law.
7. The costs for the applicant be provided for.

The application was supported by the statement of facts and the verifying affidavit of the applicant together with the exhibits attached on the affidavit all filed in court on 16.02.2014.

The respondents filed on 29.01.2015 the affidavit of Joseph G. Ndung'u and the notice of preliminary objection to oppose the petition. The respondents were represented by Abwuor and Company Advocates. The 3rd respondent subsequently appointed the Attorney General to act for him and learned litigation counsel F.O. Makori appeared in that behalf. The 3rd respondent filed on 05.03.2015

a notice of preliminary objection. The 3rd respondent further filed on 10.03.2015 the affidavit of Makori Okello Advocate.

Prior to filing the present judicial review application, the applicant Amin Mohammed Ali filed judicial review No. 2 of 2014 at the High Court in Nyeri and which was later transferred to the Industrial Court at Nyeri as cause No. 21 of 2014. The judgment in that case was delivered on 06.06.2014. This court ordered as follows:

1. That Mr. John Mutahi Muritu who was purportedly elected to replace the applicant is hereby declared invalidly in office and ought to cease holding such office forthwith.
2. That the issue of the removal of the applicant if deemed necessary be considered afresh in accordance with Constituencies Development Fund Act and rules of natural justice generally.
3. That until that is done, the applicant remains in office as the chair of CDFC Laikipia East.
4. That his resumption of duty is however stayed for 30 days to enable CDFC members prepare for his resumption of duty or recommence his removal if still necessary in accordance with the CDFC Act and rules of natural justice.

In accordance with the orders of the court as set out above, the 11th respondent opted to begin the applicant's removal process afresh by the letter dated 16.06.2014 which stated the allegations that were levelled against the applicant. The allegations included unauthorised formation of ward bursary committees; demand for refund of Kshs. 93,100 spent on the said bursary committees from the fund account manager; unilateral directive on sports uniforms; and false allegations against the 11th respondent's members to the effect that the members had plundered public funds as carried in the Star Newspaper of Monday 09.06.2014 while, the applicant knew the same to be false. Thus, the letter stated that the 11th respondent contemplated to remove the applicant as chairman and member of the 11th respondent as per section 24 subsection 15 of the Act. The letter invited the applicant to appear before the 11th respondent on 30.06.2014 at 10am to answer to and for a fair hearing of the allegations. The letter further asked the applicant to deliver any written representations, if he wished to do so, at least two clear days before the scheduled oral hearing.

The applicant wrote the letter of 27.06.2014 acknowledging receipt of the letter of 16.06.2014 and further stating that he wished to convey that he would appear before the 11th respondent on Monday the 30.06.2014 in the company of his advocate.

On 30.06.2014, the applicant accompanied by his advocate attended the meeting as scheduled. The main agenda at the meeting was for the applicant to defend himself. It is the applicant's case that at that meeting, the allegations were put against the applicant by the respondents and the applicant was then immediately put to his defence. The court has perused the minutes of the 11th respondent's meeting of 30.06.2014. It is recorded that the 11th respondent's vice chairperson read the allegations against the applicant before the members as contained in the letter to the applicant dated 16.06.2014. It is further recorded that the vice chairperson then asked the chairman to respond to the charges in the order in which they were read to him.

The applicant's case is that he was not given an opportunity to hear the accusers' side of the story so as to establish the case against him before he was put to his defence. The applicant's further case is that he fully and adequately responded to the allegations with a witness and evidence but which the respondents chose to ignore and neglect. The applicant's further lamentation is that his advocate was not allowed by the respondents at that meeting to ask questions or comment and at all times the respondents was hostile to the advocate. The court has once again perused the minutes and there is no record showing that the applicant's advocate was ever given an opportunity to participate in the hearing. In such circumstances, the applicant's case is that the respondents denied him the right to legal representation.

Thus the applicant pleads that he was put before an unfair and biased process by the respondents and the principles of natural justice were not satisfied. In particular, the applicant submitted that the respondents denied him a chance for a fair hearing as is contemplated under section 25 (15) of the Constituencies

Development Fund Act, 2013 and Article 50 of the Constitution. The applicant has urged that his removal was predetermined by the respondents; it was an unfair administrative action; it amounted to unfair labour practice; and the people of Thingithu Ward were aggrieved that their chosen elected member had been summarily removed without any adherence to the laws of Kenya.

The respondent was removed as the chairman and member of the 11th respondent by the letter dated 4.07.2014 and flowing from the resolution by the 11th respondent at the meeting of 30.06.2014. The applicant was therefore aggrieved and decided to commence the present judicial review proceedings.

The respondents' grounds of opposition to the petition are as follows:

1. That the court lacks jurisdiction to hear and determine the application because the dispute does not involve employer and employee relationship but it involves constituency development fund matters that are provided for under the Constituencies Development Fund Act, 2013. Further, the court lacks jurisdiction to determine the dispute because under section 12 of the Employment and Labour Relations Act, 2011 the court is not conferred with the jurisdiction to determine the present dispute.
2. The applicant moved the court instead of moving the Constituencies Development Fund Board in the first instance as provided for in section 49 (1) which provides that all complaints and disputes by persons arising due to the administration of the Act shall be forwarded to the board in the first instance. It was urged for the respondents that the section ousted the jurisdiction of the court and the applicant had not exhausted the prescribed statutory role of the board to resolve complaints and disputes. Accordingly, it was submitted that the court in the present case must exercise restraint and decline jurisdiction so that the board as the relevant statutory organ is given opportunity to deal with and resolve the dispute.
3. The applicant was not entitled to and should not have appeared at the 11th respondent's proceedings for removal of the applicant because section 24 of the Act did not provide for or contemplate representation by advocate.
4. By the letter dated 04.07.2014, the 11th respondent informed the applicant about the 11th respondent's verdict to remove the applicant from office and the minutes of the meeting held on 30.06.2014 were attached on that letter.
5. The issue of the applicant's removal from office was finalised and sealed as required by law. The respondents had complied with the rules of natural justice and the applicant's case must therefore fail.
6. It was clear that the 11th respondent and its members were the accusers of the applicant so that the issue of not knowing or hearing the accusers as urged for the applicant did not arise because the allegations were in writing and in English, a language the applicant was conversant with. (See paragraph 30 of the replying affidavit of Joseph G. Ndung'u filed on 29.01.2015).
7. The respondents rightly resisted the applicant's appearance with his advocate because provisions of the Act did not support such appearance. The Act did not provide for legal representation.

The 1st issue for determination is whether the court has jurisdiction to hear and determine the case. It was submitted for the respondents that there was no employer-employee relationship so that the court lacked jurisdiction. The respondents submitted that the applicable law was the Constituencies Development Fund Act, 2013. For the applicant it was submitted that the applicant was a servant of the people employed by the 11th respondent. Further it was submitted for the applicant that the applicant drew wages in form of allowances and there was no doubt that he was an employee within the definition of an employee under the Employment Act, 2007. Under the Act, "employee" means a person employed for wages or a salary and includes an apprentice and indentured learner.

The court upholds its opinion in **Richard Bwogo Birir –Versus- Narok County Government and 2 Others [2014] eKLR** thus, "The court has carefully considered the enumerated constitutional provisions and holds that all persons holding public or state office in Kenya in the executive, the legislature, the judiciary or any other public body and in national or county government are servants of the people of Kenya. The court holds that despite the level of rank of state or public

office as may be held, no public or state officer is a servant of the other but all are servants of the people. Thus, the court holds that the idea of servants of the crown is substituted with the doctrine of servants of the people under the new Republic as nurtured in the Constitution of Kenya, 2010. The hierarchy of state and public officers can be complex, detailed and conceivably very long vertically and horizontally but despite the rank or position held, the court holds that they are each a servant of the people and not of each other as state or public officers. They are all the servants of the people. The court holds that there are no masters and servants within the hierarchies of the ranks of state and public officers in our new Republic.”

The court further upholds its opinion in the ruling delivered on 30.04.2014 in Geoffrey Makana Asanyo –Versus- Nakuru Water and Sanitation Company and 6 Others [2014]eKLR thus, “The court upholds that opinion and further holds that all persons serving in public bodies are employees of the people of Kenya (through the respective public entity as the employer) under the doctrine of the servants of the people. In any event, the court takes judicial notice that such persons serve the people within defined payments be it salary or allowances or other payments as determined in accordance with the relevant constitutional and statutory provisions; and the pay qualifies for wage or remuneration for their service. The court holds that unless a clear constitutional provision exists to oust the jurisdiction of this court, like in Article 165(3) (c) that vests exclusive jurisdiction in the High Court for appeals from a tribunal’s decision as appointed under the Constitution to remove a person from a state office, matters related to the employment of state or public officers would clearly fall within the jurisdiction of this court. ”

In the present case, the applicant was a member and chairman of the 11th respondent. The applicant was a public officer and the 11th respondent was a public body. There is no doubt that the applicant drew wages in form of allowances and his service was regulated and directed by statutory provisions and applicable public service policies. The court finds that there was employer-employee relationship and the court enjoys the necessary jurisdiction to hear and determine the application.

The 2nd issue for determination is whether section 49 (1) of the Constituencies Development Fund Act, 2013 which provides that all complaints and disputes by persons arising due to the administration of the Act shall be forwarded to the board in the first instance ousted the court’s jurisdiction or rendered the application premature. For the applicant, it was submitted that the cited section 49 (1) related to complaints and disputes whereas the applicant’s case related to a decision by the 11th respondent removing the applicant from office as member and chairperson of the 11th respondent. Thus, the applicant was entitled to seek judicial review orders to deal with the offending decision and which remedies could only be granted by the court and not the board under the cited section 49 (1). The applicant further submitted that the present case did not amount to a complaint and dispute arising due to the administration of the Act.

For the respondents it was submitted that section 49 (1) has the effect of ousting the jurisdiction of the court so that the applicant’s dissatisfaction with the decision of the 11th respondent removing the applicant as member and chairperson of the 11th respondent was a complaint and dispute envisaged in the section which ought to have been forwarded to the board in the first instance. The respondents relied on the ruling in Peter Ochara Anam and 3 Others – Versus- Constituencies Development Fund Board and 4 Others [2011] eKLR where the court held that a dispute about allocation or release of funds to certain projects in Nyatike Constituency ought to have been forwarded to the board in the first instance. The respondents also cited the case of Geoffrey Kirimi Imathiu and 2 Others – Versus- Constituency Development Fund Board and 8 Others [2013] eKLR for the position that the court ought to exercise restraint by giving the board a chance to resolve the dispute in accordance with the provisions of the parent statute and as provided in the cited section 49 (1). The respondents further cited the ruling in George Morara Manyara – Versus- Hon. Maina Kamanda and 3 Others [2014] eKLR. In that case, the high court held that disputes about election or nomination to Constituency Development Fund Committee were to be forwarded to the board in the first instance by the aggrieved person before moving the court.

The court has considered the submissions made for the parties and revisited the provisions of section 49 of the Constituencies Development Fund Act, 2013. The sub-sections provide as follows:

- 1. All complaints and disputes by persons arising due to the administration of this Act shall be forwarded to the Board in the first instance.**
- 2. Complaints of a criminal nature shall be forwarded by the Board to the relevant government agencies with prosecutorial powers.**
- 3. Disputes of a civil nature shall be referred to the Board in the first instance and where necessary an arbitration panel whose costs shall be borne by the parties to the dispute, shall be appointed by consensus of the parties to consider and determine the matter before the same is referred to court.**
- 4. Notwithstanding subsection (3), parties shall be at liberty to jointly appoint an arbitrator of their choice in the event of a dispute but where parties fail to jointly agree on an arbitrator, the Cabinet Secretary may appoint an arbitrator whose costs shall be jointly borne by the parties.**
- 5. Subject to this Act, no person in the management of the Fund shall be held personally liable for any unlawful action taken in his official capacity or for any disputes against the Fund.**

The court has carefully considered the provisions of the section. In the opinion of the court, the complaints and disputes arising due to the administration of the Act and which ought to be forwarded to the board in the first instance relate to substantive or meritorious matters under the Act. In the opinion of the court, such matters do not include procedural improprieties that may occur in the process of administering the Act and which are properly in the province of the court's jurisdiction in judicial review. Thus, it is the court's opinion that a person who is dissatisfied with the manner in which the Constituencies Development Fund Committee or any other authority under the Act is exercising the statutory authority need not forward such dissatisfaction to the board before filing an application to remedy the offending procedural impropriety.

While making that distinction, the court is alert that certain of the judicial review remedies such as certiorari are available within the prescribed timeline of 6 months from the date of the offending decision. The law does not provide for extension of such timelines. Thus, a person who is dissatisfied with the committee's procedural impropriety would by reason of lapsing of the prescribed time permanently be barred from ever moving the court and obtaining such judicial review orders.

The court has carefully reconsidered section 49 of the Act as against the submissions made for the respondents. The section provides for a mechanism of resolution of complaints and disputes which are to be forwarded to the board in the first instance. First are complaints of a criminal nature which the board is required to forward to relevant government agencies with prosecutorial powers. Second, are disputes of a civil nature which are to be decided by an arbitration panel or simply an arbitrator. Thus, the destiny of disputes or complaints forwarded to the board in the first instance fall for decision by an arbitrator or the government agency with prosecutorial powers. The board is not by itself given the power to decide the disputes and the submission that the court was to take a cautionary approach to allow the board as the statutory dispute resolution body was, in the opinion of the court, misconceived because the board was not vested with dispute resolution powers. The further pertinent question before the court is whether such arbitrator or government agency with prosecutorial powers would have the necessary legal capacity to make judicial review orders of certiorari, prohibition or mandamus. In the opinion of the court, the answer cannot be in the affirmative because judicial review orders as are applied for in the present case are only available through the court process.

To answer the 2nd issue for determination, the court finds that upon the 11th respondent making the decision to remove the applicant from the office of member and chairman of the 11th respondent, the applicant was entitled to move the court by way of an application for judicial review orders to remedy procedural impropriety that may have taken place in the process of making the removal decision. In particular, the court returns that section 49 of the Constituencies Development Fund Act, 2013 does not oust this court's jurisdiction to hear and determine judicial review application instituted in view of decisions or manner of exercise of authority or power granted under the Act.

The 3rd issue for determination is whether the applicant was subjected to a fair hearing and rules of natural justice in the process of the 11th respondent arriving at the decision to remove the applicant as member and chairman of the 11th respondent. As submitted for the respondents, in judicial review proceedings, the court should only examine the procedural defects that may have occurred in arriving at the decision that is said to be offensive and the court will not delve into the merits of the decision.

In the present case, the applicant was by the letter inviting him to the hearing informed of the allegations levelled against him. He requested to appear at the hearing together with his advocate. It is not in dispute that the Constituencies Development Fund Act, 2013 is silent on whether the applicant could appear at the hearing together with his advocate. However section 24(15) of the Act states that a member of the Constituency Development Fund Committee may be removed by a decision made through a resolution of at least 5 members of the committee and the member sought to be removed shall be given a fair hearing before the resolution is made. The respondents in their replying affidavit have conceded that during the hearing, the respondents resisted the participation of the applicant's advocate because the Act did not provide for the applicant to appear together with his advocate. As urged for the applicant, the applicant having requested to appear together with his advocate, the respondents having not objected to such appearance with the advocate, and the respondents having in fact admitted or allowed the advocate in the hearing proceedings, it is the court's opinion that the applicant thereby acquired a legitimate expectation that the advocate would represent him at the hearing through the respondents permitting the advocate to actively participate in the proceedings. The material on record show that the respondents admit that they resisted the advocate's participation at the hearing and further that the applicant's evidence and submission is that the advocate suffered hostilities from the respondents throughout the hearing. Accordingly, the court finds that the applicant's advocate did not effectively participate in the hearing thereby defeating the applicant's legitimate expectation to a fair hearing through legal representation.

While making that finding, the court holds that in a democratic civilised society, the right to legal representation during administrative decision making is desirable and in absence of any identifiable bar it is a crucial component of fair hearing which cannot be defeated in absence of clear statutory qualification. In the present case, there was no such statutory qualification and the court holds that the applicant was entitled to appear at the hearing together with his advocate especially in view of the gravity and consequence of the allegations that had been levelled against the applicant by the respondents. In this case, the respondents did not advance any ground that would have made legal representation inimical and the court finds that the respondents having allowed and not objected to the applicant attending the hearing with his advocate, the respondents were thereby bound to allow the advocate to effectively participate in the proceedings. It was desirable that the respondents exercised their discretion in favour of allowing the advocate to attend but by resisting the advocate's participation in the proceedings, the court finds that the applicant's legitimate expectation to the legal representation was thereby thwarted and the proceedings, taking into account the other defects stated in this judgment, fell short of the fair hearing the applicant was entitled to.

The applicant has lamented that he was put to his defence without his accusers being heard towards establishing a case against the applicant. Thus, the applicant was required to defend himself and exculpate himself without there being a case established against him. The rules of natural justice require that the decision maker is independent meaning that the decision maker is not directly or indirectly involved in the dispute subject of the decision maker's deliberation. In the present case, the respondents in the replying affidavit and as earlier cited in this judgment stated that the applicant had been served with a letter inviting him to the hearing and setting out the allegations. Further, the respondents stated in the replying affidavit that it was clear that the 11th respondent and its members were the accusers of the applicant so that the issue of not knowing or hearing his accusers did not arise because the allegations were in writing and English, a language the applicant was conversant with.

First, the court finds that the respondents having admitted to have been the accusers of the applicant, their sitting in judgment to decide the case on its merits rendered the decision maker, the respondents, biased. Second, the letter setting out the allegations did not amount to establishing the allegations and in the opinion of the court, it was vital that evidence was moved through documents and calling of witnesses to establish the allegations before the applicant could be called upon to give his side of the story. In other

words, the court finds that the rules of natural justice on fair hearing were contravened because both sides to the dispute were not heard by an independent arbiter before the decision to remove the applicant was made. The court finds that the applicant's entitlement to a fair hearing generally and more specifically as provided for in section 24(15) of the Act was breached. Third, the court has carefully analysed the flow of events in this case. It is clear from the record that the respondents were the investigators, the accusers and the judge. The court finds that such set of circumstances clearly defeated fair hearing. In the court's opinion, if the respondents cared to stop and reflect upon the tenets of justice, the respondents would have found that they fell short of according the applicant a fair hearing on the merits of the case so that the respondents would have considered forwarding the dispute to the board under section 49 for an independent panel of arbitrators to consider the merits of the case. That having not taken place, and the respondents having made a decision in contravention of the rules of natural justice and in absence of a fair hearing, the decision to remove the applicant as member and chairman of the 11th respondent is amenable to judicial review.

The court has revaluated the statutory provision that the members of the Constituency Development Fund Committee were entitled to remove any of the Committee members by resolution and through a process upholding a fair hearing. The court holds that administrative decision makers must be careful that they operate at arm's length from the investigative and prosecutorial functions in the cases they are called upon to decide. Such, in the opinion of the court, would assure that the decision maker is independent and not biased. The court's attention was drawn to the judgment in **Institute of Social Accountability & Another –Versus- National Assembly & 4 Others [2015]eKLR** where the High Court held that the Constituencies Development Fund Act, 2013 was defective in many respects from the manner it was enacted, its objective, design and implementation so that the purpose and design of the Act was constitutionally flawed and the entire Act was unconstitutional. This court finds that the provisions on removal of a member of the Committee by resolution of the Committee following a fair hearing of the member is one such design of the Act that was defective because with such a statutory provision, like it has been shown in the present case, it would be very difficult or impossible to observe the rules of natural justice during such removal process.

To answer the 3rd issue for determination, the court finds that the applicant was not accorded a fair hearing and rules of natural justice in the process of the 11th respondent arriving at the decision to remove the applicant as a member and chairman of the 11th respondent.

The 4th issue for determination is whether the applicant is entitled to the remedies as prayed for. The court makes findings as follows:

1. The court finds that the applicant is entitled to certiorari to quash the 11th respondent's resolution made on 30.06.2014 to remove and expel the applicant as chairman and member of the 11th respondent because decision was made in breach of the rules of natural justice as the applicant was not accorded a fair hearing.
2. The court finds that the quashing of the decision to remove the applicant as per (1) above has the consequence that Newton Kabuthia was not validly appointed to the office of chairman of the 11th respondent as there was no valid vacancy and the applicant is entitled to certiorari to quash that appointment of Newton Kabuthia.
3. The court finds that consequential to quashing of the removal of the applicant on 30.06.2014 as member and chairman of the 11th respondent, the applicant thereby stands back to the office of member and chairman of the 11th respondent. The court therefore finds that it would be superfluous and unnecessary to issue an order of mandamus compelling the respondents to reinstate the applicant as a member of the 11th respondent.
4. The court finds that the applicant is entitled to the order of prohibition against the respondents prohibiting them from interfering with the applicant's exercise of the statutory duties as chairman of the 11th respondent.
5. The court finds that the applicant is entitled to a declaration that the applicant remains the lawful holder of the position of chairman for the 11th respondent.

6. The court finds that the applicant is entitled to a finding that the resolution and decision of the respondents in respect of the removal and expulsion of the applicant from the committee constitute a conduct that is in full violation of the law.

It was submitted for the respondents that the applicant had come to court late because the removal decision was made in the resolution of 30.06.2014 and the application was filed on 18.12.2014. The court has considered that submission and finds that the application was filed within the prescribed 6 months for seeking the order of certiorari. The court therefore finds that the applicant moved the court within the permissible time and as such was not guilty of unreasonable delay as urged for the respondents.

In conclusion, judgement is entered for the applicant Amin Mohammed Ali against the respondents for:

1. The judicial review order of certiorari quashing the 11th respondent's resolution made on 30.06.2014 to remove and expel the applicant as chairman and member of the 11th respondent.
2. The judicial review order of certiorari quashing the appointment of Newton Kabuthia to the office of chairman of the 11th respondent.
3. The judicial review order of prohibition against the respondents prohibiting them from interfering with the applicant's exercise of the statutory duties as chairman of the 11th respondent.
4. The declaration that the applicant remains the lawful holder of the position of chairman for the 11th respondent.
5. The finding that the resolution and decision of the respondents in respect of the removal and expulsion of the applicant from the committee constituted a conduct that was in full violation of the law.
6. The respondents to pay the applicant's costs of the application.

Signed, dated and delivered in court at **Nyeri** this **Thursday, 30th April, 2015.**

BYRAM ONGAYA

JUDGE