REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

MISC. APPLICATION NO. 598 OF 2017

BETWEEN

REPUBLIC……APPLICANT

VERSUS

THE CABINET SECRETARY

MINISTRY OF INTERIOR & CO-ORDINATION

OF NATIONAL GOVERNMENT……1ST RESPONDENT

ATTORNEY GENERAL……2ND RESPONDENT

NON-GOVERNMENTAL ORGANISATIONS

CO-ORDINATIONS BOARD……3RD RESPONDENT

EXECUTIVE DIRECTOR

(NGO CO-ORDINATION BOARD)……4 TH RESPONDENT

THE DIRECTOR

CRIMINAL INVESTIGATIONS……5 TH RESPONDENT

THE GOVERNOR

CENTRAL BANK OF KENYA……6 TH RESPONDENT

THE DIRECTOR

OF PUBLIC PROSECUTIONS……7 TH RESPONDENT

AND

THE LAW SOCIETY OF KENYA…….INTERESTED PARTY

EX PARTE:

AFRICA CENTRE FOR OPEN

GOVERNANCE……1ST EX PARTE APPLICANT

JOHN GITHONGO……2ND EX PARTE APPLICANT

MAINA KIAI……3RD EX PARTE APPLICANT

DR. FUNMI OLONISAKIN……4 TH EX PARTE APPLICANT

STELLA CHEGE……5 TH EX PARTE APPLICANT

DONALD DEYA……6 TH EX PARTE APPLICANT

CHARLES WANGUHU……7 TH EX PARTE APPLICANT

GLADWELL OTIENO……8TH EX PARTE APPLICANT

JUDGEMENT

Introduction

1. By a Notice of Motion dated 28th September, 2017 the *ex parte* applicants herein seek the following orders:

1) An Order of Certiorari to remove into the High Court and quash the decision of the 4th Respondent on his own accord and on behalf of the 1st and 3rd Respondents contained in its letter referenced NGOB/5/30A/8/VOL.VI dated 15th August 2017 urging and directing the 5th and 6th Respondent to forthwith close down the operations of the 1st Ex-Parte Applicant.

2) An Order of Certiorari to remove into the High Court and quash the decision of the 4th Respondent on his own accord and on behalf of the 1st and 3rd Respondents contained in its letter referenced NGOB/5/30A/8/VOL.VI dated 15th August 2017 urging and directing the 5th and 6th Respondent to forthwith effect arrests and commence criminal prosecutions of the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Ex-Parte Applicants.

3) An Order of Certiorari to remove into the High Court and quash the decision of the 4th Respondent on his own accord and on behalf of the 1st and 3rd Respondents contained in its letter referenced NGOB/5/30A/8/VOL.VI dated 15th August 2017 ordering the Ex-Parte Applicants to forthwith cease and wind up its operations.

4) An Order of Prohibition directed to the 1st, 3rd, 4th and 5th Respondents prohibiting the 1st, 3rd, 4th and 5th Respondents from carrying out and/or performing any acts or conduct whatsoever (physical or otherwise), intended at forthwith closing down the operations of the 1st Ex-Parte Applicant.

5) An Order of Prohibition directed to the 5th and 7th Respondents prohibiting the 5th and 7th Respondents from effecting arrests of, commencement of, and prosecuting the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Ex-Parte Applicants in any criminal proceedings under the Non-Governmental Coordination Act (1990) relating to Activities and/or operations of the 1st Ex-Parte Applicant.

6) An Order of Prohibition directed to the 6th Respondent prohibiting the 6th Respondent from taking any measures aimed to freezing of bank accounts in the name of the 1st Ex-Parte Applicant and funds therein on any orders, instructions, proceedings and/or directions by the 1st, 3rd, and 4th Respondents made under the Non-Governmental Coordination Act (1990).

Applicants' Case

2. The 1st applicant herein, **Africa Centre for Open Governance** (AFRICOG) is described as an independent, non-profit organisation registered under the Companies Act, as a company not having a share capital, that provides cutting edge research and monitoring on governance and public ethics in both public and private sectors so as to address the structural causes of the crisis of governance in Kenya. The rest of the applicants are directors of the 1st applicant.

3. According to the applicants, on 15th August, 2017, the 4th Respondent herein, the Executive Director of the NGO Co-ordination Board, drew and issued a letter referenced NGOB/530A/8VOL.XI captioned *Operating an Non-Governmental Organisation without Registration Contrary to section 12 of the NGO Co-ordination Act, 1990 by the Africa Centre for Open Governance (AFRICOG)* addressed to the Director Criminal Investigations Department (the 5th Respondent herein).

4. It was averred that the said letter was copied to the 1st ex parte applicant, and the 6th Respondent but was not officially served on the 1st ex parte applicant. It was disclosed that the said letter was issued in the name, style and authority of the **Cabinet Secretary Ministry of Interior & Co-ordination of National Government** and **Non-Governmental Coordination Board** (the 1st and 3rd Respondent herein).

5. According to the applicants, the dint and purpose of the said letter was to initiate a process geared towards closing down the operations of the 1st ex parte applicant and trigger immediate arrest and prosecution of the 2nd to 8th ex parte applicants and the freezing of all 1st applicant's bank accounts by the 6th Respondent.

6. It was the applicants' case that the said letter cited a legal regime that does not apply to the applicant. The applicants insisted that since its incorporation the 1st applicant operated publicly, religiously and diligently complying with all statutory and regulatory regulations under the Companies Act. Further the 1st applicant has since its incorporation maintained a public website where all its activities are disclosed and regularly updated, its publication are published for free download, its funders and financials (Income Expenditure accounts) and Audited Accounts published and Annual reports regularly updated and published for free download.

7. The applicants averred that on 16th August, 2017, the 1st applicant was raided by officers of the 6th Respondent with a purported irregular orders for search and seizure issued in Nairobi CM's Court Misc. App. No. 2550 of 2017 dated 15th August, 2017 to conduct a search, collect records and computers ostensibly on grounds that the 1st ex parte applicant was suspected of committing unspecified tax related offences and is not registered for VAT as required by law.

8. It was the applicants' case that the Respondents' actions were arbitrary; that the 4th Respondent does

not posses any powers whatsoever to make demands, issue directives and/or recommendations whatsoever relating to the 1st applicant's activities and/or operations; that the purported Court Orders for Search and Seizure issued by the Magistrate's Court were null and void *ab initio* for want of jurisdiction; that the purported application for the said orders did not disclosure reasonable suspicion for commission of an offence provided by law and was hence malicious, heavy handed and contravened the spirit of Article 31 of the Constitution as the application did not required that the evidence obtained be placed before the Court; and that the acts of the respondents constituted illegal and unlawful harassment.

9. It was the applicants' case that the conduct and actions of the Respondents were intended to derail the 1st applicant's activities relating to the 2017 General Elections in particular observation, research and possible litigation arising therefrom.

1st to 5th Respondents' Case

10. In response to he application the 1st to 5th Respondents filed grounds of opposition in which the following issues were raised:

1. That the Application is frivolous, vexatious and an abuse of court process.

2. That on the 16th August, 2017 the Ag. Cabinet Secretary, Ministry of Interior and Co-ordination of National Government, Fred Matiangi wrote a letter to 4th Respondent to wit:

a. Directing the 4th Respondent together with the Principal Secretary, Ministry of Interior and Co-ordination of National Government to form an inclusive and representative committee to review the compliance status of the Ex-parte Applicant.

b. Directing the 4th Respondent to suspend, any action envisioned in the Letter REF NGOB/5/30A/8/VOL.VI dated 15th August on the Ex-parte Applicant up to 90 Days to enable the said committee to work with the Ex-parte Applicant to meet the Regulation and compliance needs of the 3RD Respondent.

3. That it is premature for the Ex-parte applicant to bring this suit before Court while there has been an effort demonstrated by the Cabinet Secretary geared towards resolution of the issue in dispute.

4. That respondents pursuant to the said directive by the 1st Respondent have not any further action against the Ex-parte applicants pending the Outcome of the Committee report.

5. That the applicant failed to disclose the measures taken by the 1st Respondent at the time of seeking Leave to file this Notice of Motion.

6. That this honourable Court ought to grant the parties time to exhaust the alternative mode of resolving the dispute as already commenced before seizing the matter.

7. That in the circumstances and based on the foregoing reasons the notice of motion is therefore baseless, misconceived and devoid of any merit and orders sought should not be granted.

11. In their submissions, the said Respondents contended that this application is frivolous, vexatious and

an abuse of the court process. It was contended that at the time of filing this application, the ex parte applicants did not disclose to the Court that the Respondents had already commenced a process that was intended to address the issues raised in this application.

12. According to the said Respondents, on 16th August, 2017, the Ag. Cabinet Secretary, Ministry of Interior and Co-ordination of National Government, **Fred Matiangi**, wrote a letter to the 4th Respondent copied to the Principal Secretary in the same Ministry whose import was to direct the 4th Respondent together with the said PS to form an all-inclusive and representative committee to review the compliance status of the applicant and in the ,meantime to suspend any action envisioned in the subject letter up to 90 days to enable the Committee carry out the said task.

13. It was therefore the said Respondents' position that these proceedings were premature since there was in place an administrative process set up by the said Cabinet Secretary geared towards the resolution of the issues in dispute hence it was only prudent for the applicants to exhaust the said administrative process already in place before coming to court for redress. In this respect the said Respondents relied on **John Fitzgerald Kennedy Omanga vs. The Postmaster General Postal Corporation of Kenya & 2 Others Nairobi HCMA No. 997 of 2003, Kipkalya Kones vs. Republic & Another ex-parte Kimani Wanyoike & 4 Others (2008) 3 KLR (EP) 291, Francis Gitau Parsimei & 2 Others vs. National Alliance Party & 4 Others Petition No.356 and 359 of 2012, Republic vs. National Environment Management Authority [2011] eKLR** and section 9(2)(3) and (4) of the ***Fair Administrative Action Act, 2015.***

14. The said Respondents therefore disclosed that as a result of the said directive the 1st Respondent had not taken any adverse action against the ex parte applicants pending the outcome of the said Committee's report.

15. The Court was therefore urged to dismiss this application with costs in order to enable the parties exhaust the alternative mode of resolving the dispute.

6th Respondent's Case

16. On its part the 6th Respondent filed grounds of opposition raising the following issues:

1. That the application does not disclose any cause of action against the 6th respondent and is an abuse of the court process

2. That the suit disclose no claims real or specious as against the 6th respondent.

3. That the application does not disclose any violation real imagined or anticipated by the 6th respondent.

4. That the petitioners have sued the Governor, Central Bank of Kenya instead of the Central Bank Kenya which is a separate legal entity from the Governor.

5. That the applicants are not banking institutions, neither are they licensed nor regulated under the Banking Act and as such, the Central Bank of Kenya cannot exercise any regulatory mandate over them.

6. That the Central Bank of Kenya does not have the authority real or imagined to order and or freeze bank accounts. This is a prerogative of the honourable court.

7. That the application as against the 6th respondent is consequently on the grounds outlined above misconceived, and therefore an abuse of the court process.

17. It was submitted on behalf of the 6th Respondent by its learned counsel, **Mr Ouma**, that the only reason the 6th Respondent was joined to these proceedings was the because the letter from the 3rd Respondent Board was copied to the 6th Respondent.

18. It was averred that the 6th Respondent is a creature of the Constitution and pursuant to Article 231(3) of the Constitution, it is not under the direction or authority of any person. It was therefore contended that notwithstanding the said letter, the 6th Respondent is not under the Respondents' direction.

19. The 6th Respondent further disclosed that it has no authority to freeze the 1st applicant's accounts since its mandate is to supervise Banking institutions and not the ex parte applicants.

20. As regards the issue of the warrants, it was submitted that the annextures exhibited show that it was in fact Kenya Revenue Authority and not the 6th Respondent that had instigated the same. To the 6th Respondent as these two are distinct institutions, no case has been made against the 6th Respondent and the ex parte applicants' apprehension is misplaced and misconceived. The Court was therefore urged to strike out the 6th Respondent from these proceedings.

Determinations

21. I have considered the application the verifying affidavit, the grounds of opposition and the submissions made herein.

22. As none of the Respondents filed any affidavit, it follows the factual averments of the ex parte applicants are uncontroverted. Accordingly, the opposition to the application can only be sustained on matters of law.

23. In **Mohammed & Another vs. Haidara [1972] E.A 166** *at page 167* paragraph F-H, **Spry V.P** considered the failure by a party to file any reply to allegations set out in evidence and expressed himself as follows:

"The respondent made no attempt to reply to these allegations and they therefore remain unrebutted…Here, the respondent's affidavit gives no material facts and the only real evidence of facts is that contained in the appellant's affidavit. In these circumstances, it seems to me that a replying affidavit was essential. There was no need for it to be prolix but it should have made clear which of the facts alleged by the appellants were denied…"

24. Similarly in **Kenya Akiba Micro Financing Limited vs. Ezekiel Chebii & 14 others [2012] eKLR** the court stated as follows:

"In my view, a statement made on oath should as a matter of fact be expressly denied on oath. If not challenged, it remains a fact and the truth for that matter."

25. I have considered the issues raised in this application. In my view the only issue for determination in this application is whether the Respondents had the power to issue the impugned direction.

26. It is trite that a judicial or quasi-judicial tribunal, such as the Respondent herein has no inherent powers. In **Choitram vs. Mystery Model Hair Salon [1972] EA 525**, **Madan, J** (as he then was) was of

the view that since powers must be expressly conferred, they cannot be a matter of implication. Similarly, in **Gullamhussein Sunderji Virji vs. Punja Lila and Another HCMCA No. 9 of 1959 [1959] EA 734**, it was held that Rent Restriction Board being a creation of statute neither the Board nor its chairman has any inherent powers but only those expressly conferred on them. Therefore neither the Respondent nor the 1st interested party has inherent powers and must operate within the strictures of the law.

27. It was in appreciation of the foregoing position that the Court in **Ex Parte Mayfair Bakeries Limited vs. Rent Restriction Tribunal and Kirit R (Kirti) Raval Nairobi HCMCC No. 246 of 1981** held that in testing whether a statute has conferred jurisdiction on an inferior court or a tribunal the wording must be strictly construed: it must in fact be an express conferment and not a matter of implication since a Tribunal being a creature of statute has only such jurisdiction as has been specifically conferred upon it by the statute. Therefore where the language of an Act is clear and explicit the court must give effect to it whatever may be the consequences for in that case the words of the statute speak the intention of the legislature. Further, each statute has to be interpreted on the basis of its own language for words derive their colour and content from their context and secondly, the object of the legislation is a paramount consideration. See **Chogley vs. The East African Bakery [1953] 26 KLR 31 at 33 and 34; Re: Hebtulla Properties Ltd. [1979] KLR 96; [1976-80] 1 KLR 1195; Choitram vs. Mystery Model Hair Salon** (supra); **Warburton vs. Loveland [1831] 2 DOW & CL. (HL) at 489; Lall vs. Jeypee Investments Ltd [1972] EA 512 at 516; Attorney General vs. Prince Augustus of Hanover [1957] AC 436 AT 461**.

28. It is therefore clear that a Tribunal's power must be conferred by the Statute establishing it which statute must necessarily set out its powers expressly since such Tribunals have no inherent powers. Unless its powers are expressly donated by the parent statute, it cannot purport to exercise any powers not conferred on it expressly. As has been held time without a number, where a statute donates powers to an authority, the authority ought to ensure that the powers that it exercises are within the four corners of the statute and ought not to extend its powers outside the statute under which it purports to exercise its authority. In **Republic vs. Kenya Revenue Authority Ex Parte Aberdare Freight Services Ltd & 2 Others [2004] 2 KLR 530** it was held that the general principle remains however, that a public authority may not vary the scope of its statutory powers and duties as a result of its own errors or the conduct of others.

29. Therefore where the law exhaustively provides for the jurisdiction of an executive body or authority, the body or authority must operate within those limits and ought not to expand its jurisdiction through administrative craft or innovation. The courts would be no rubber stamp of the decisions of administrative bodies. Whereas, if Parliament gives great powers to them, the courts must allow them to it, the Courts must nevertheless be vigilant to see that the said bodies exercise those powers in accordance with the law. The administrative bodies and tribunals or boards must act within their lawful authority and an act, whether it be of a judicial, quasi-judicial or administrative nature, is subject to the review of the courts on certain grounds. The tribunals or boards must act in good faith; extraneous considerations ought not to influence their actions; and they must not misdirect themselves in fact or law. Most importantly they must operate within the law and exercise only those powers which are donated to them by the law or the legal instrument creating them. See **Re Hardial Singh and Others [1979] KLR 18; [1976-80] 1 KLR 1090.**

30. The preamble to the ***Non-Governmental Organisations Co-ordination Act*** provides as follows:

An Act of Parliament to make provision for the registration and co-ordination of Non-Governmental Organizations in Kenya and for connected purposes.

31. Sections 7 and 8 thereof provide as hereunder:

The functions of the Board shall be—

(a) to facilitate and co-ordinate the work of all national and international Non-Governmental Organizations operating in Kenya;

(b) to maintain the register of national and international NonGovernmental Organizations operating in Kenya, with the precise sectors, affiliations and locations of their activities;

(c) to receive and discuss the annual reports of the Non-Governmental Organizations;

(d) to advise the Government on the activities of the Non-Governmental Organizations and their role in development within Kenya;

(e) to conduct a regular review of the register to determine the consistency with the reports submitted by the Non-Governmental Organizations and the Council;

(f) to provide policy guidelines to the Non-Governmental Organisations for harmonizing their activities to the national development plan for Kenya;

(g) to receive, discuss and approve the regular reports of the Council and to advise on strategies for efficient planning and co-ordination of the activities of the Non-Governmental Organizations in Kenya; and

(h) to develop and publish a code of conduct for the regulation of the NonGovernmental Organizations and their activities in Kenya.

32. It is therefore clear from the foregoing provisions that the said Act is only applicable to the registration and co-ordination of Non-Governmental Organizations in Kenya and for connected purposes. It clearly does not apply to any other entity which does not fall within the definition of a Non-governmental organisation.

33. In this case, it is contended which contention is not controverted that the 1st ex parte applicant is registered as a company. If that is the position and there is no evidence to the contrary, then the 3rd and 4th Respondents have no jurisdiction over the 1st applicant and the directives purportedly given were ultra vires. In my view by taking the decision it took and giving the directives they purported to have issued the said Respondents overreached themselves and abused their powers.

34. It is now clear that power ought to be properly exercised and ought not to be misused or abused. According to **Prof Sir William Wade in his Book *Administrative Law*:**

“The powers of public authorities are…essentially different from those of private persons. A man making his will, may subject to any right of his dependants dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law, this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land…regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. The whole conception of unfettered discretion, is inappropriate to a public authority which possesses powers solely in order that it may use them for the public good. But for public bodies the rule is opposite and so of another character altogether. It is that any action to be taken must be justified by positive law. A public body has no

heritage of legal rights which it enjoys for its own sake, at every turn, all of its dealings constitute the fulfilment of duties which it owes to others; indeed, it exists for no other purpose…But in every such instance and no doubt many others where a public body asserts claims or defences in court, it does so, if it acts in good faith, only to vindicate the better performances of the duties for whose merit it exists. It is in this sense that it has no rights of its own, no axe to grind beyond its public responsibility; a responsibility which define its purpose and justifies its existence, under our law, that is true of every public body. The rule is necessary in order to protect the people from arbitrary interference by those set in power over them…"

35. As was held in **Keroche Industries Limited vs. Kenya Revenue Authority & 5 Others Nairobi HCMA No. 743 of 2006 [2007] 2 KLR 240** while citing **Reg vs. Secretary of State for the Environment Ex Parte NottinghamShire Country Council [1986] AC**:

"A power which is abused should be treated as a power which has not been lawfully exercised…A public authority must not be allowed by the court to get away with illogical, immoral or an act with conspicuous unfairness as has happened in this matter, and in so acting abuse its powers. In this connection Lord Scarman put the need for the courts intervention beyond doubt in the *ex-parte Preston* where he stated the principle of intervention in these terms: "I must make clear my view that the principle of fairness has an important place in the law of judicial review: and that in an appropriate case, it is a ground upon which the court can intervene to quash a decision made by a public officer or authority in purported exercise of a power conferred by law." The same principle was affirmed by the same Judge in the House of Lords in *Reg vs. Inland Revenue Commissioners, ex-parte National Federation of Self Employed and Small Business Ltd [1982] AC 617* that a claim for judicial review may arise where the Commissioners have failed to discharge their statutory duty to an individual or have abused their powers or acted outside them and also that unfairness in the purported exercise of a power can be such that it is an abuse or excess of power. In other words it is unimportant whether the unfairness is analytically within or beyond the power conferred by law: on either view, judicial review must reach it. Lord Templeman reached the same decision in the same case in those helpful words: "Judicial review is available where a decision making authority exceeds its powers, commits an error of law commits a breach of natural justice reaches a decision which no reasonable tribunal could have reached or abuses its powers." Abuse of power includes the use of power for a collateral purpose, as set out in *ex-parte Preston,* reneging without adequate justification on an otherwise lawful decision, on a lawful promise or practice adopted towards a limited number of individuals. I further find as in the case of *R (Bibi) vs. Newham London Borough Council [2001] EWCA 607, [2002] WLR 237*, that failure to consider a legitimate expectation is a failure to consider a relevant consideration and this would in turn call for the courts intervention in assuming jurisdiction and giving the necessary relief."

36. In this case no legal provision has been cited empowering the said Respondents to take the action they did. As was held by **Nyamu, J** (as he then was) in **Midland Finance & Securities Globetel Inc vs. Attorney General and Another [2008] KLR 650:**

"Whether the Ministry in entering in the PWC, is exercising executive power or assumed power or statutory power, judicial orders would lie if the power is non existent or being improperly exercised… [It] is clear from past decisions of this Court, that public officers have only the power granted to them by law or statute. They cannot act outside the granted power…[T]he judiciary accepts a responsibility for the maintenance of the rule of law that embraces a willingness to oversee executive action and to refuse to countenance behavour that threatens either basic human rights or the rule of law. ..[F]or public bodies the rule is … that any action to be taken must

be justified by positive law. A public body has no heritage of legal rights which it enjoys for its own sake at every turn, all of its dealings constitute the fulfilment of duties which it owes to others indeed it exists for no other purpose…The rule is necessary in order to protect the people from arbitrary interference by those set in power over them."

37. This Court has in the past raised its concern on the manner in which the said 3rd and 4th Respondents purport to carry out their mandates. To paraphrase **Warsame, J** (as he then was) in **Mohamed Aktar Kana vs. Attorney General Nairobi HCCP No. 544 of 2010** the new Constitution has enshrined national values and principles of governance which encompass *inter alia*, the rule of law, good governance, integrity, transparency and accountability. The manner in which the 3rd and 4th Respondents have continued to abuse their powers raises the basic issue of whether they as a state organs and state officers respectively are being guided by the provisions of the Constitution when they breach the same with remarkable arrogance or ignorance. The numerous suits being filed against the said Respondents revolving around abuse of their powers are a serious indictment on them whether they are adhering to the rule of law as required of them under Article 10 of the new Constitution. The various decisions of this Court arising from the challenge of the manner in which the 3rd and 4th Respondents are purporting to exercise their powers is a clear indication that the said Respondents have not tried to understand and appreciate the provisions of the Constitution and the statute under which they operate and goes on to show that yester years impunity are still thriving in our executive arm of the Government. We however shall not relent in reminding the 3rd and 4th Respondents and any other state organ or officer that they must keep to the straight and narrow in the exercise of their powers and when they step outside of their powers to bring them back on track.

38. In this case it was however contended by the 1st to 5th Respondents that since the 1st Respondent has taken action towards the resolution of the dispute that amounts to an alternative remedy that ought to be explored first. I agree that where there is an alternative remedy and especially where Parliament has provided a statutory appeal procedure, it is only in exceptional circumstances that an order for judicial review would be granted. In this case however since there is no affidavit filed, this Court cannot state with certainty the nature of the process that is being undertaken if at all, by the 1st Respondent. Secondly, it has not been pointed to me that the process that the Cabinet Secretary is allegedly undertaking is anchored in law and that it will offer a more convenient, beneficial and effectual remedy.

39. In the premises, that process cannot be a basis for declining to grant an otherwise merited application.

40. I fully associate myself with the position adopted by the Court of Appeal in **Law Society of Kenya vs. Centre for Human Rights and Democracy & 13 Others [2013] eKLR** that:

"If it is proved that the tribunal, person or authority has deviated from the established and set beacons or pathway or legal criteria as delineated and demarcated for it and has run wild and amok, and at worst has gone on a frolic of its own, become an unruly horse and engaged in caprice, malice, witch-hunting and a wild goose chase running helter- skelter, it is the duty of the High Court through its supervisory jurisdiction to pull the leash and firmly point the delineated legal path that the tribunal, person or authority is enjoined by law to tread and to follow.

The supervisory jurisdiction of the High Court is the leash and bridle that affirm and ensures that all tribunals, persons or authority are subject to the Constitution, rule of law, natural justice and good governance. It ensures that there is no trampling and aberration of the fundamental rights of the citizen. The supervisory jurisdiction is an in-built internal check and balance within the judicial system. It is the king pin upon which the cog and wheels of justice revolve and without it,

untrammelled exercise of discretion reigns supreme – this is not what the people of Kenya intended when they promulgated the 2010 Constitution. The people of Kenya intended to have a country governed by the Constitution and the rule of law, not an unchecked exercise of judicial and quasi-judicial power by any person or authority."

41. Accordingly, if it is proved that in purporting to exercise the powers donated to him by law a public officer has gone out of control or has exceeded the legal parameters and criteria set out for the exercise of his jurisdiction, the leash of the supervisory jurisdiction of the High Court must be activated and invoked.

42. The expressions of this Court in **International Centre for Policy and Conflict vs. Attorney General & Others Nbi Misc. Civil Cause No. 226 of 2013**, bears repetition. There, the Court pronounced itself as follows:

"Courts are the temples of justice and the last frontier of the rule of law and must therefore remain steadfast in defending the letter and the spirit of the Constitution no matter what other people may feel. To do otherwise would be to nurture the tumour of impunity and lawlessness. That tumour like an Octopus unless checked is likely to continue stretching its eight tentacles here and there grasping powers not constitutionally spared for it to the detriment of the people of this nation hence must be nipped in the bud."

43. I have said enough to show that the Notice of Motion dated 28th September, 2017 is merited. I however agree that the 6th Respondent ought not to have been dragged into these proceedings. It is however clear that it was the 3rd and 4th Respondents' misplaced letter that provoked that course of events.

Orders

44. In the result the orders which commend themselves to me and which I hereby grant are as follows:

a. An order of certiorari removing into this Court for the purpose of being quashed the decision of the 4th Respondent on his own accord and on behalf of the 1st and 3rd Respondents contained in its letter referenced NGOB/5/30A/8/VOL.VI dated 15th August 2017 urging and directing the 5th and 6th Respondent to forthwith close down the operations of the 1st Ex-Parte Applicant which decision is hereby quashed.

b. An order of certiorari removing into this Court for the purpose of being quashed the decision of the 4th Respondent on his own accord and on behalf of the 1st and 3rd Respondents contained in its letter referenced NGOB/5/30A/8/VOL.VI dated 15th August 2017 urging and directing the 5th and 6th Respondent to forthwith effect arrests and commence criminal prosecutions of the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Ex-Parte Applicants which decision is hereby quashed.

c. An order of certiorari removing into this Court for the purpose of being quashed the decision of the 4th Respondent on his own accord and on behalf of the 1st and 3rd Respondents contained in its letter referenced NGOB/5/30A/8/VOL.VI dated 15th August 2017 ordering the Ex-Parte Applicants to forthwith cease and wind up its operations which decision is hereby quashed.

d. An Order of Prohibition directed to the 1st, 3rd, 4th and 5th Respondents prohibiting the 1st, 3rd, 4th and 5th Respondents from carrying out and/or performing any acts or conduct whatsoever (physical or otherwise), intended at forthwith closing down the operations of the 1st Ex-Parte

Applicant in pursuance of the said decision.

e. An Order of Prohibition directed to the 5th and 7th Respondents prohibiting the 5th and 7th Respondents from effecting arrests of, commencement of, and prosecuting the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Ex-Parte Applicants in any criminal proceedings under the Non-Governmental Coordination Act (1990) relating to Activities and/or operations of the 1st Ex-Parte Applicant in pursuance of the said decision.

f. An Order of Prohibition directed to the 6th Respondent prohibiting the 6th Respondent from taking any measures aimed to freezing of bank accounts in the name of the 1st Ex-Parte Applicant and funds therein on any orders, instructions, proceedings and/or directions by the 1st, 3rd, and 4th Respondents made under the Non-Governmental Coordination Act (1990) in pursuance of the said decision.

g. The costs of this application are awarded to the applicants and the 6th Respondent to be borne by the 3rd and 4th Respondents.

45. Orders accordingly.

Dated at Nairobi this 18th day of December, 2017

G V ODUNGA

JUDGE

Delivered in the presence of:

Miss Gikonyo for Mr Mohochi for the Applicant

CA Ooko